United States Court of Appeals for the Second Circuit

APPENDIX

77-1150

B
P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1150

UNITED STATES OF AMERICA,
Appellee,

—v.—

AMREP CORPORATION, RIO RANCHO ESTATES, INC., ATC REALTY CORPORATION, HOWARD W. FRIEDMAN, CHESTER CARITY, HENRY L. HOFFMAN, and DANIEL FRIEDMAN,
Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX OF UNITED STATES OF AMERICA AND ALL DEFENDANTS

Volume III—Pages A-1361 to A-2040

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THE COURT: Aside from the allocation system and there isn't any.

Next question.

Q Mr. Zaknich, do you recall after making that suggestion about the allocation system Mr. Fleming asked you the following questions:

THE COURT: Page?

MR. KAUFMAN: 1165, line 12:

"Q These men were working for commissions, weren't they?

"A Yes, they were.

"Q I take it that the manager felt an obligation to his salesmen to give them an opportunity to sell land?

"A That's correct.

"Q I take it if a particular salesman believed that a person he had been talking to had an interest in a particular parcel, the manager had an obligation to allow that salesman to try to sell that parcel?

"A That's correct."

Q Could the up system have been utilized to allow the salesman a greater degree of flexibility and order in choosing a particular parcel to try to sell a customer?

MR. ARKIN: I don't believe that's proper redirect, your Honor. I object.

THE COURT: Overruled.

A There were times that a manager would give a salesman a parcel and permit him to have time to work on a client with that.

Q You are not answering the question, Mr. Zaknich.

Instead --

MR. ARKIN: May that be stricken?

THE COURT: He is not answering the question.

Q Instead of the use of holds, Mr. Zaknich, could the manager have stood up and utilizing the order of the up system turn to the salesman who was number one on the up list and say salesman, number one, what lot can I reserve for you? And salesman number two, what lot can I reserve for you and do it in that order, was that feasible?

A He could have.

Q That wouldn't have created the same sense of enthusiasm, isn't that right?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Do you recall Mr. Fleming questioning you on cross examination about the New York State offering statements telling the customer that the customer was buying the right to utilities only and roads by Sandoval County?

A I do.

Q Were there statements where Rio Rancho land was sold where no offering statements were required and, therefore, none given to the customer?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q You testified on cross examination that a home site owner was buying the right to exchange into a building area that contained utilities, is that right?

A I did.

Q Was that possible for every one of the home site owners who bought a residential parcel?

MR. ARKIN: Objection, your Honor. He is asking about possibilities or speculation. It calls for some kind of --

THE COURT: I gather this refers to the contract itself, is that right, Mr. Kaufman?

MR. ARKIN: You can't get that from the question, your Honor.

MR. KAUFMAN: I am not specifically referring to the contract, your Honor. Mr. Zaknich testified on cross examination that home site owners bought a right to exchange into the building area.

I am asking him -- maybe I should offer this at the side bar --

THE COURT: Put your question.

MR. KAUFMAN: I am asking whether or not that was possible for all the people who bought residential lots in view of the number of lots that were reserved in the building area.

In other words, if everybody who bought a lot in the residential area wanted to exchange, were there enough lots in the exchange area?

MR. ARKIN: Your Honor, that question, aside from --

THE COURT: Sustained.

MR. ARKIN: Thank you.

(Continued on next page.)

Q Mr. Zaknich, I believe you testified in connection with the exchange privilege, there were approximately 10 per cent of the total number of lots at Rio Rancho reserved as lots in the building areas, is that right?

A In each unit, yes.

Q Once those lots in the building area were filled up, what would happen to the next home site owner who wanted to exchange into the building area and there were no lots available to exchange into?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Zaknich, do you know what provisions the company made with respect to the possibility of lots not being available in the building area?

A Yes, sir.

Q And what provision was that?

A In the event that there were none available, there would be a refund of moneys that had been paid to the company.

MR. KAUFMAN: Your Honor, if I may read from Exhibit 789 in evidence, which is the New York State offering statement dated April 17, 1970.

At the bottom of page 8, the last paragraph:

"The possibility exists that at the time a purchaser is entitled and wishes to make such an exchange, there will be no lots in the improved areas available for exchange. In such event, purchaser may retain the lot he purchased or tender its return to the company and receive a refund of all moneys paid. Refunds will be contingent upon the company's ability to repay."

Q Mr. Zaknich, were you aware of any moneys set aside by the company to cover that contingency?

MR. FLEMING: I object to that. That would be a matter of --

THE COURT: Sustained.

Q Do you know if that refund provision included any rate of interest on the home site owner's moneys that he previously paid?

MR. ARKIN: Objection.

THE COURT: This is not redirect, Mr. Kaufman.

You have had this witness on redirect for hours.

Q Mr. Zaknich, do you recall Mr. Fleming asking you about whether or not it was AMREP's intention to build homes, and you said that it was?

A I did.

Q And Mr. Fleming asked you about whether or not development increased the value of the land and you said that it was, that development did so increase --

A That it did, yes.

Q When you left AMREP, about how many homes were there at Rio Rancho Estates?

A There were less than a thousand. Somewhere between 800 and 1,000.

Q And do you recall about what the rate of construction was at the time you left AMREP; about approximately how many homes per year were being built?

A In excess of 200; somewhere between 200 and 250.

Q And were you aware of any projections that AMREP made in connection with future construction of homes on a yearly basis?

A Projecting to increase it to either double it or into the 400 area, 400, 450.

Q Were you aware at the time you left AMREP there were approximately 86,000 lots at Rio Rancho?

MR. FLEMING: Objection. This is direct examination, again, your Honor.

THE COURT: Sustained.

MR. KAUFMAN: Your Honor, may I make an offer at the side bar?

THE COURT: No.

You have had two witnesses on now on direct.

MR. KAUFMAN: Yes, your Honor. But this is redirect of Mr. Fleming --

THE COURT: I am sorry, it is not proper redirect.

Bring your case out on direct, not on redirect.

Q Mr. Zaknich, do you recall Mr. Fleming asked you if it was not the fact that Dan Friedman's responsibilities at AMREP were primarily finance?

A I do.

Q Who took over in charge of sales when you left AMREP?

A Dan Friedman.

MR. KAUFMAN: No further questions, your Honor.

THE COURT: All right.

You may step down.

MR. GLENDON: Your Honor, may we approach the bench?

THE COURT: Yes.

MR. GLENDON: Can you ask the witness to stay?

THE COURT: Stay out in the witness room, sir.

(At the side bar.)

MR. LARKIN: Off the record, your Honor. I am very sorry about that. It is the first time it ever happened.

MR. GLENDON: Your Honor, I would like to turn to Exhibit 70, which is the film of the Golden Future.

We made an application on Thursday evening to review the film on the basis that the government was offering a film which we didn't feel was the film that it purported to be.

We did review the film. And your Honor will recall, I know, that it was used as a film which the witnes saw and used in 1967 and 1968.

We reviewed the film. It shows at the beginning of the film it has a copyright of 1969.

It further shows that it has a New York NYA number of 1972.

When they get an NYA number, it is because there is a substantial change to a film. They don't run down to New York and get a new number ever time they change a comma or a word.

It is our position that the government is proffering an exhibit which they have to know was not an exhibit which was in use in 1967 as the witness testified. There were changes.

As I sat there, I counted some 24 changes in the script from one script to the other.

Under those circumstances, your Honor, I want to move that this exhibit be stricken as an exhibit. I think the government is forfeiting or calling an exhibit which simply does not exist and the government does know it.

MR. ARKIN: May I add one thing.

One of the allegations in the indictment is what changes were made in advertising or in sales representations in 1970 were shading or qualifying, that is, the allegation was that there were very few changes of any substance.

Our problem here is that this exhibit is represented as, say, a 1967 production and then you bring in a 1972 production which really would be the same as the 1967 production which is really the 1972 production to sustain that allegation. It is an unfair allegation.

MR. KAUFMAN: That is our point. If the witness looking at a 1972 film says it is the same film of 1967 or 1968, that proves the point we are making.

THE COURT: No. Mr. Glendon's point is that the 1972 film must have been a substantive change, otherwise you didn't get an NYA number.

If it is a substantive change, it can't be the same. It can't be just changing of wording.

MR. KAUFMAN: That is one of the issues that we are disputing here. We don't believe that it was a substantive change at all, and the witnesses are saying --

THE COURT: All I have seen is one film. It is either a 1972 film or a 1969 film. Which is it?

MR. KAUFMAN: According to what Mr. Glendon says, and I will accept what he says, there are two, The West Side Story --

MR. GLENDON: I am not talking about The West Side Story, I am talking about the Folden Future.

MR. KAUFMAN: We only have one version of that.

MR. GLENDON: I am saying the Golden Future has a 1972 NYA number which they have taken down --

THE COURT: Do you have an earlier one?

MR. KAUFMAN: No. We only have the films the company produced, your Honor. It is the only thing we can show our witnesses.

THE COURT: I think you better -- you don't have scripts from prior to 1972?

MR. KAUFMAN: We do, and those will be introduced during the trial.

MR. GLENDON: There is going to be an objection.

If your Honor doesn't sustain our objection as I think and hope your Honor will to strike this film, the other part of our objection would be to preclude them from putting in any earlier scripts to try to prove this allegation in paragraph 17(L) of the indictment there was a toning down.

If they are saying now this film existed the same in 1967 as it does in 1972, then they can't come in here and try to show changes.

THE COURT: I gather there were changes. The question is, were they substantial changes?

MR. ARKIN: Yes. And they have a witness who --

THE COURT: Wait a second.

The witness says they are not substantial changes.

You say that because there was a new number obtained there had to be substantial changes.

MR. GLENDON: They won't take them down, as I understand it.

THE COURT: I can't decide that.

MR. ARKIN: Als, your Honor, it is unfair --

THE COURT: The witness says it is the same as Mr. Fleming's photographs, "I saw the film, I had the transcript and as far as I am concerned, it fairly represents what I was shown in 1967 and 1968."

MR. ARKIN: But if he had both films before him like a photo lineup, then he can make a comparison.

THE COURT: No, he didn't.

MR. ARKIN: That is the whole point. For him now --

THE COURT: The witness who testified that this looked like a home site didn't have two films before her, she only had one that Mr. Fleming took.

MR. ARKIN: I understand.

But this is a situation where a man has not seen a film in eight or nine years and for him --

THE COURT: But he went to hundreds of them.

MR. ARKIN: I know. But the point is, your Honor, to have him say, well, it is about the same when there were changes which go right to the root of the indictment here made, there were changes made in 1971, 1970, 1972 --

MR. GLENDON: 1969.

MR. ARKIN: Excuse me.

It seems to me where an allegation in the indictment is that they didn't really make any effort to change in 1970 when the regulations changed, to let this man, based upon what has to be a blurred, albeit, some recollection, testify --

THE COURT: That is for the jury. I am sorry. The objection is overruled.

(In open court.)

(Witness excused.)

THE COURT: Next witness.

MR. KAUFMAN: I call Otto Bondy.

OTTO STEVE BONDY, called as a witness by the Government, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Bondy, how old are you?

A I am forty-seven.

Q What is your current employment?

A I work for a company called Advanced Management Research, and I'm in the sales department.

Q And what type of sales are you engaged in?

A My company sells seminars to private businesses, as well as the government.

MR. FLEMING: Your Honor, I can't quite hear.

THE WITNESS: My company sells seminars to private enterprises, as well as government and state agencies.

Q What type of seminars?

A Seminars on marketing, computers, finance, sales.

Q In connection with your work for Advanced

Management Research, are you known by any other name?

A Yes, I am. I have a phone name as Steve Brooks.

Q You say a phone number.

A A phone name, strictly as a phone name.

Q Why did you take on this name for employment?

A Because by coincidence there was a woman who had the same name, last name, and there would have been confusion on telephones and correspondence.

Q How long have you been with Advanced Management Research?

A Since July of last year, 1975.

Q What is your educational background, Mr. Bondy?

A I have four years of college from Columbia.

Q Without necessarily detailing every particular job, you just tell us what sort of jobs you had since you graduated from college.

A Yes.

I was a sales representative for a laundry firm; I sold land in the Poconos; I sold land for the AMREP Corporation, Rio Rancho Estates; I worked for two educational schools, one is a company called Career Academy, the other one was called Taylor Business Institute.

Q Approximately how long were you a salesman in the laundry business before you sold land in the Poconos?

A I believe about seven years.

Q Then how long did you sell land in the Poconos?

A About three years.

Q Until what year?

A I sold land in the Poconos until 1969, because after that I joined the AMREP Corporation.

Q Why did you -- by the way, what was the name of the company you worked for?

A In the Poconos?

Q Yes.

A Poconos Farms.

Q And what type of land did you sell there?

A We sold vacation homesites. It was a very small community.

Q And what was the reason for your leaving Pocono Farms?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Can you tell us the circumstances -- well, withdrawn.

I believe you said your next job, then, was with AMREP, is that right?

A That's right, sir.

Q Can you tell us the circumstances of your going to work for AMREP?

MR. FLEMING: I object to the form of that question.

THE COURT: Overruled.

A Would you repeat the question, sir?

Q Yes.

Can you tell us the circumstances of your going to work for AMREP?

A Well, Pocono Farms was just about finishing up, it was a small community in the Poconos. I was looking for work.

A friend of mine at that time told me there was a company looking for salesmen, Rio Rancho Estates, at AMREP Corporation.

I made a telephone call, I got through to a gentleman by the name of Peter Miller, he asked me to come in, he interviewed me, my background, and he asked me that the best way for me to add credibility to the product would be to go as an observer to a dinner, which I did that very same night.

Q Before we get to that, do you recall where you went to for this interview?

A Yes. I went to 16 West 61st Street.

Q And who was Peter Miller? What was his relationship or capacity in the company?

A He was general manager of ATC Realty.

Q And what was ATC Realty in relation to AMREP?

A It was a New York broker of record for the AMREP Corporation.

Q You say you went to a dinner that same night?

A Yes.

Q Do you recall where that dinner was?

A The dinner that night was at a restaurant in the Bronx on Westchester Avenue, but, frankly, thename of the restaurant does escape me.

It was Chateau something or other.

Q Do you recall if you went with anybody else?

A I drove up with one of the managers and the crew in the car, yes, I did.

Q Had you ever been to a land sales dinner before that?

A Never in my life.

Q When you were selling land in the Poconos, how did you sell land there?

MR. ARKIN: Objection,your Honor.

THE COURT: Sustained.

THE WITNESS: Shall I answer the question, sir?

THE COURT: No.

Q After you attended that dinner, what did you do in connection with your job?

A I was instructed prior to going to the dinner that if I found what I have seen --

MR. FLEMING: That is not responsive, if your Honor please.

THE COURT: Repeat your question, Mr. Kaufman.

Q After you attended that dinner, what did you do in connection with getting the job at AMREP or ATC?

A I was going to that dinner --

MR. FLEMING: Objection.

THE COURT: After the dinner what did you do?

THE WITNESS: Oh, the next day I called up Peter Miller.

Q Was that pursuant to --

A And I told him I was interested.

Q And what did Peter Miller say?

A He told me to come in, which I did, and he transferred my New York Real Estate Salesman License, which is a formality that costs a dollar to transfer and you advise Albany that you are now working for one broker to the present broker. It is just a transfer of brokership.

Then he put me on to another team so that I can learn the product, product knowledge.

Q Did you begin to sell Rio Rancho land right away?

A No, sir.

Q Did you go through some sort of training session?

A Yes, sir.

Q About how long was that period of training?

A I believe the period of training was approximately three or four days.

Q And what did the training consist of?

A Learning how to make out contracts, to be able to read the various overall maps that indicated the various units of Rio Rancho Estates, and a lot of time was spent on teaching to overcome objections from customers.

Q Was part of your training also the attendance at dinners?

A Oh, yes.

Q During your training, were you told what the main inducement was to get people to buy Rio Rancho land?

MR. FLEMING: I object to the form of that question.

THE COURT: Overruled.

A Would you repeat the question, sir?

Q Yes.

During the course of your training, were you told what the main inducement was to get people to buy Rio Rancho land?

A Yes.

Q And what was that inducement?

A The inducement was that we were building a community in the sunshine area of our country where there was industrial growth.

MR. GLENDON: Your Honor, could we fix the time of this?

THE COURT: Yes.

He said roughly 1969, I gather.

When in 1969?

THE WITNESS: April of 1969, sir.

Q And during your training, was anything said about investment?

MR. FLEMING: Objection. That is a leading question.

The question was asked, if your Honor please.

THE COURT: Sustained.

Q Was anything else said about inducements to get people to buy the land?

A There were quite a few.

Q Well, could you tell us what they were?

A The indicement was that it is an investment --

Q What kind of investment?

A A land investment.

Q I assume you were trained to tell people that it was a good investment, is that right?

MR. ARKIN: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Did your training include the reasons why this land was a good investment?

MR. ARKIN: Objection.

THE COURT: Overruled.

Q Did you hear the question?

A Would you say it again, please?

MR. KAUFMAN: Would the reporter read it back.

(Record read)

MR. ARKIN: He testified, if your Honor please, land investment, not good investment. There is no foundation.

THE COURT: Change it to land investment.

MR. KAUFMAN: Change it to land investment.

A I was told that this land investment was a good investment because the company was building a pre-planned community.

Q And was anything said with respect to the effect Albuquerque would have on Rio Rancho in terms of your training?

A Well, part of the presentation -- part of the training, rather, was, as we were told, that the area of Albuquerque is surrounded on three sides by mountains and that the only further growth of this particular had to go inthe direction where Rio Rancho Estates is situated.

Q When your training period was over, I gather you began to sell land, is that right?

A Yes, sir.

Q And at these sales dinners, were you called a salesman or did you have some other title?

A We were called program -- hold it.

We were called land consultants.

Q And how were you compensated as a land consultant?

A Strictly on a commission basis.

Q Do you recall what the commission rate was?

A I believe the commission rate at that time was six percent of the sale.

Q And how long did you remain a land consultant?

A I believe for a period of about seven or eight months, and then I became a team captain or a group manager, either of those titles was --

Q Let's use team captain.

A Okay.

Q Can you tell us what you mean by team captain?

A Okay.

Once somebody becomes a team captain, and we had at one time five or six teams that used to travel all over the five greater boroughs of New York and also as far as Kingston, New York, and my responsibility at that time was to give a presentation, public presentation to the people that were invited to the dinner that particular evening, it was my responsibility to make sure that my equipment, which consisted of cameras, a slide projection screen that showed various slides, literature cases, contracts, allocation sheets were kept in order and up to date, and it also was my responsibility to constantly train the members of my team.

Q So in other words, you were in charge of one team that ran a dinner party, is that right?

A Right, sir.

Q You said there were five such teams while you worked in AMREP, is that right?

A There were five traveling teams.

What I mean by traveling teams, teams that usse to each night duringthe week go to various restaurants.

Q And how many land consultants --

MR. FLEMING: If your Honor please, Mr. Kaufman's last question included the phrase "worked for AMREP".

I object to that.

MR. KAUFMAN: I am sorry. I will substitute ATC to that.

MR. FLEMING: Didn't he testify he worked for ATC?

THE COURT: Yes.

THE WITNESS: Yes, sir.

Q How many land consultants were there per team?

A It used to fluctuate from time to time to as little as five to as many as eight or nine.

Q And how were you compensated as a team captain?

A I worked on an override on the people on the members of my team. Whatever they sold, I was working on a two percent override commission.

Q How long were you a team captain for ATC involved in the sale of Rio Rancho land?

A I believe until January of 19 -- I believe it was 1973.

Q How many dinner parties were there every week, on the average?

A With the exception of the summer months, where we did not work on weekends most of the time, it consisted of five dinner parties during the week, Monday through Friday, and usually on a Sunday afternoon we would have what was called a special dinner which was called for property owners.

These are people who had bought property, had visited Rio Rancho Estates and they were invited to bring guests, which we called referrals.

Q Was that schedule about the same for the other teams working for ATC?

A Yes, sir.

I would just like to add one other thing, sir, and that is the Sunday dinners, usually the entire company, the entire group of the sales force worked as one unit.

Q In other words, all five teams were at the

Sunday dinner?

A All teams, in addition to the give travel teams. We had other teams.

Q What other teams did you have?

A Well, we had what was known as a VIP team, we had a team that was called a hospitality team, which worked right in ATC quarters, which at one time was on 61st Street, then we moved to 1700-something Broadway, between 57th and 58th.

end t2 b

Q Approximately how many dinner parties did you attend during your years with ATC?

A I am guessing now, but I would say every bit of 700.

Q What time were the evening dinners scheduled to begin?

A They were always scheduled for the same time to begin, promptly at 7:00 o'clock.

Q Where were the dinners held, what type of establishment?

A Restaurants and catering halls. Mostly in restaurants.

Q Do you know whose responsibility it was to invite people to these dinners?

A No, I don't.

Q Was that handled by ATC?

A I am not sure, sir.

Q Do you have any idea how people were chosen to be invited?

A No, sir.

Q As team captain, did you know the names of the people who would be attending any particular dinner?

A Yes, sir, only by name.

Q How would you know that?

A Because as the customers -- as the potential customers would receive this invitation, he would mail a RSVP card that he is going to be joining us at that particular dinner at that particular date.

Q The RSVP card would be mailed back to ATC?

A Right.

Q What time did you and your team usually arrive at the restaurant?

A Anytime between five and six, depending where we had to go.

Q What did the team do after it arrived at the restaurant?

A What we did was to set up the room to our style.

Q What style was that?

A The tables were set up in a fashion to face the front of the room or wherever the speaker and the screen was going to be situated.

Q What else was done besides positioning the tables and setting up the equipment?

A It was the responsibility -- it was my responsibility to set up the equipment, which I already told you.

It was also the responsibility of the salesmen, the land consultants to distribute on their tables the various literatures that we used, such as the offering statement, the property report and some of the other advertising material that were used at these land development dinners.

Q How was that literature distributed on the table?

A It was put in the middle of the table.

Q In any particular order?

A Just -- it depended on the individual. Some of them would spread it around. Others would just keep it in one pile.

Q What items of promotional material were put on the table ahead of time?

A Well, the offering statement, the property report --

Q Was the offering statement and property report promotional material?

A No, they were required by law.

Q Were those items used in making a sale?

A Well, let me put it to you this way: They were put there for the convenience of the potential customer.

Q I will repeat the question: Were they used in making the sale?

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. KAUFMAN: Your Honor, I don't believe the witness answered the question the first time.

THE COURT: I don't understand your question.

MR. KAUFMAN: I will get back to it, your Honor.

Q What were some of the brochures that were put on the table?

A We had a book, a brochure that was put out by the company called "This Is My Land", I believe.

Q Was "This is My Land" used in making the sale?

A Yes, sir, it was part of our presentation.

Q How was it used?

A Well, during the --

MR. FLEMING: I object to the foundation for this type of testimony.

THE COURT: This witness is testifying how the various documents were used in selling the property. The whole purpose of the dinner was to sell property.

MR. FLEMING: No question. My point is he is talking about a routine, practice, what he saw, what he did?

THE COURT: I gather it was the routine and practice, he was the boss.

MR. FLEMING: Okay.

Q Mr. Bondy, I gather what you are testifying to is what you know from your experience from attending at least seven hundred dinner parties?

THE COURT: Wait. The basis for asking him is he was the team captain and in charge.

MR. KAUFMAN: Yes, your Honor.

THE COURT: Whether he attended one or a hundred made no difference.

Q I show you what has been marked Government Exhibit 388 for identification and ask if you can identify that.

A Yes, sir. This is the brochure that we used at the dinner parties.

THE COURT: What is the number, please?

MR. KAUFMAN: 388, your Honor.

THE WITNESS: 388.

MR. KAUFMAN: The government offers 388.

MR. ARKIN: Just a brief question on voir dire, your Honor.

THE COURT: Go ahead.

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VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Bondy, was this the particular brochure utilized in 1969 or later, if you know?

A I believe from time to time -- and I am guessing now, sir -- that from time to time that book was either updated or revised for whatever reason.

Q You are not able to say that this brochure was used at any particular time, am I correct?

A Right, sir. I mean it was used continuously, but if you are trying to -- if your question to me, sir, has it been revised in terms of print, it may very well have been from time to time.

Q Those revisions, those updates amounted to changes in the particular brochures from time to time, didn't they?

A True.

Q So that you cannot say that this particular document was used at any particular time?

A No, sir, there is no way I can identify that.

MR. ARKIN: Your Honor, until the government has a better foundation. I would suggest it is not admissible Objection.

THE COURT: I agree.

DIRECT EXAMINATION CONTINUED

BY MR. KAUFMAN:

Q What types of changes were made in this brochures, Mr. Bondy?

A Well, there were two types of changes that were usually made.

One was where we would update the product within the brochure itself --

Q Wait, slow down.

You say update the product. What do you mean?

A Certain additions that we may want to include in that particular brochure as a company.

Q You mean in terms of the number of homes that are there or the number of industries--

THE COURT: No, ask him.

A Yes, the various growth or developments taking place within Rio Rancho Estates and from time to time a lot of our printed material had to be changed because the Department of State, the Real Estate Board of the Department of State, which was sort of governing us, recommended or suggested or insisted that we make various changes. It wasn't just in this brochure. It was in other printed material as well.

Q Do you recall what kind of changes those were?

A I think most of the changes had to do with updating statistics to present.

Q Directing your attention to page 8 and 9 of 388 for identification, did those two pages continue to exist during the time that you worked for ATC?

A Yes, sir.

Q Were there changes in these two changes?

A I am not sure. I don't think so, but I am not sure, sir.

Q I ask you to read page 8 and tell me if you can recall whether or not page 8 was ever changed.

(Pause)

A It's hard for me to say, Mr. Kaufman. Offhand it looks the same, but I am not sure if there were any changes or any updates made from time to time.

Q The substance of what appears on page 8, was that substance communicated during all the times that you were at ATC?

MR. GLENDON: Objection, your Honor, unless there is a foundation laid that he compared it with later brochures.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Bondy, can you tell from looking at that brochure whether or not that brochure was used at any time during the four years you worked at ATC?

A Yes, sir.

Q It was?

A Yes, sir. It was used every night.

Q That is not what I am saying. I don't think you understood the question.

YOu said that these brochures were changed from time to time, is that right?

A Yes.

Q That particular brochure, that version of that brochure, can you say whether or not that version was used during any of the four years that you were at ATC?

A Yes, sir.

MR. KAUFMAN: The government renews its offer, your Honor.

THE COURT: Can you give us any idea when?

THE WITNESS: I cannot, your Honor.

THE COURT: I will take it.

(Government's Exhibit 388 received in evidence)

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MR. GLENDON: Your Honor, may I offer an objection on the basis of the answer. I didn't quite hear him.

THE COURT: He said it was used, but he cannot exactly fix the date and I have allowed it in.

Q I show you Government's Exhibit 271 in evidence.

Can you identify that?

A Yes, I can.

Q Was that one of the items of promotional material that was on the table?

A Yes, it was.

Q I believe you said that -- referring back to "This is My Land" -- that that brochure was used in the sale, is that right?

A Yes, sir.

Q Can you tell us how it was used in the sale?

A During the manager's presentation we made the people that were invited that evening aware of the fact that it was laying on the table and we called their attention to pages 7, 8 and 9, especially page 9, because here it indicates the profits that were made in terms of sales and resales in and around the Albuquerque area during the years indicated in this brochure.

Q That was a standard part of the presentation?

A That was a standard part of the presentation.

Q Were the property reports and offering statements used in the sale the same way that you say "This Is My Land" was used in the sale?

MR. ARKIN: Objection, your Honor. It is an unfair question.

THE COURT: Sustained. You can ask him a direct question, Mr. Kaufman. That is all you are permitted to do on direct examination. You should know how to phrase the question.

Q Mr. Bondy, what use, if any, were made of the property reports and offering statements at the dinners?

A Actually, the only use that they served was that they were put there because it was the law that we had to put them on the tables.

We put them in the center of the table, at least we instructed the salesmen to put them in the center of the table, and it was the manager's responsibility in his presentation to the public each and every night to make them aware that the property report, as well as the offering statements, are made available for them at the tables. This was a part of our presentation.

end t3a

THE COURT: When you say manager, is that the same as team captain?

THE WITNESS: Yes, sir, team captain.

Q There was time set aside during the dinner presentation to allow the people to read those property reports and offering statements?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q What happened after the team set up the room in preparation for the dinner?

A Usually I would go over the allocation sheet. The allocation sheet describes the property that was made available for sale that particular evening. It would change from day to day.

Q When you say go over it, who would you go over it with?

A With the salesmen, with the land consultants.

Q Continue.

A We would go over some of the pieces that were available there for that particular evening's sale.

I would go over any new memos that were given to me during the course of the day. Some of the salesmen would meet me directly at the dinner party, they would come from home or wherever, and I would go over whatever

I had to discuss with them, letters, telephone calls from customers, getting ready for the following weekend's dinner, who are they inviting, how many people they anticipate having at the dinner as their guests and then we would just relax until about 7:00.

Q That's when people were let into the room?

A 7:00 sharp.

Q How were sales people assigned to customers?

A In order to keep it fair, we used a rotation list which was commonly referred to in real estate as an up list. It was the team captain's responsibility to make sure that this rotation was always fair so that during the course of a week everybody would have so many people sitting with them.

Now, in addition to that, the salesman also had his own invites, which were either his property owners and their referrals.

Q What was the first thing that happened when the customers arrived?

A As they would come through the door, they would give me their card, I would register them on a guest list to indicate that they actually attended and then I would turn them over to the land consultant. Either I would walk them directly over to the table and introduce them to the land consultant or I would have an assistant take them over to whomever was designated for that particular client.

Q Was the customer introduced to the salesman as the salesman being his land consultant, is that the phrase that was used?

A As a land consultant.

Q Once the land consultant took the customers to the table, what happened at the table?

A Well, various salesmen worked different ways. There was no set format.

MR. FLEMING: I object.

THE COURT: Overruled.

MR. FLEMING: I don't know how he would know, your Honor. Competence.

THE COURT: He was there. You can cross examine if you wish to.

Q Continue.

A Usually a salesman would try to make somebody that is unbeknownst to him comfortable by introducing himself, talking a little warmly and letting him know that he's happy or she's happy because we had both male as well as female land consultants. Sort of a salesman's warm-up.

There is no presentation -- there is no canned or stereo type of presentation used, it is what befits the individual's personality.

Q Was anything used in connection with this warm-up period?

MR. FLEMING: I object to the form of that question.

THE COURT: I don't know what you are talking about.

MR. KAUFMAN: I don't want to make it too leading, your Honor, so I am trying to make it as general as possibl

THE COURT: Did they give them a martini or what?

Q Was there any document used in connection with this warm-up period?

MR. FLEMING: Your Honor, I object to the form of the question.

THE COURT: Overruled.

A Yes, there were various documents used.

For example, a salesman may take out this particular exhibit, which is 271, we referred to this as an area map, which shows where Albuquerque is located, which shows where Rio Rancho was located.

It also indicates the mountains that surround the city on the three sides so the salesman or the sales woman may start off by telling him that the only further growth of this particular community of Rio Rancho Estates lies in one direction.

Also some of the salesmen used something which was known, I believe, as a confidential survey.

Q Let me show you Government's Exhibit 347-F in evidence and ask if you can identify it.

A Yes, this was the old confidential survey that we used at one time. This was a Xerox, a mimeographed copy. Then we went into something a little more sophisticated, yes.

Q I show you 256 for identification. Can you identify that?

A Yes, sir. This is something that was given by the salesman to the client.

MR. GLENDON: Your Honor, could we fix the date again?

Q Do you recall about when it was that 256 for identification replaced 347-F?

A I am sorry, sir, I have no idea.

Q Sometime during the four years that you were with ATC?

A Yes, I remember both of them, but I cannot give you the exact time when this was deleted and this was used as a substitute.

MR. KAUFMAN: The government offers 256, your Honor.

MR. ARKIN: May I see?

VOIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Bondy, when you say this particular document, 256, was utilized at the dinners, are you able to recognize this particular document?

A Yes, sir.

Q Is that because of the NYA number in the bottom of the lower right-hand corner?

A I just recognize it from its overall description. I didn't look at the number.

Q Do you know if all these documents had NYA numbers?

A By law they had to, sir.

THE COURT: That's cross examination.

MR. ARKIN: No objection, your Honor.

XXX (Government's Exhibit 256 received in evidence.)

MR. KAUFMAN: Your Honor, I would like to read this to the jury now.

THE COURT: All right.

(Mr. Kaufman read from Government's Exhibit 256 in evidence to the jury.)

MR. ARKIN: If he is going to read the survey, he should read the entire document starting with the first page. The language at the bottom of the page.

THE COURT: He doesn't have to.

(Mr. Kaufman continued reading from Government's Exhibit 256 in evidence to the jury.)

BY MR. KAUFMAN:

Q Mr. Bondy, how long did this initial get acquainted session last?

A Not very long because once we let the people in by 7:00, we tried to keep everything on a rigid schedule because most of the people worked during the day, they would get restless if we just had an endless dinner type of a party.

I would believe that anywhere between 7:15 and 7:30 I would get back to the podium and do my introduction to the first film.

Q I show you a document that has been marked Government Exhibit 314 for identification and ask if you can identify this?

A Yes, I can.

Q Have you previously read through this document?

A Yes, I have.

Q Can you tell us in general what it is?

A This is the printed version of the team captain's presentation that he gave each and every night at a regular RSVP dinner.

Q Is this an accurate reflection of the presentations that you made as team captain?

A Yes, sir.

MR. KAUFMAN: The government offers 314, your Honor.

COIR DIRE EXAMINATION

BY MR. ARKIN:

Q Mr. Bondy, you were with the company about four years?

A Yes, sir.

Q The presentation changed from time to time over the four years, did they not?

A Very little, sir, but they did change. Again, updating of what was happening.

For example, when I first started with them we did not have the country club. That was brought in later.

Q You updated the growth and that kind of thing, is that about right?

A That's about all, sir.

Q With respect to this particular exhibit, 314, are you able to tell us when, if at all, it was used, what date?

A Would you repeat your question?

Q With respect to this particular exhibit, 314, the one you just looked at, are you able to tell us when, if at any time, it was used, what dates?

A Well, sir, have you got a copy of it there?

Q In my hand.

A You will notice that on top it says Steve Bondy's presentation August of 1972. I was instructed by my general manager that evening to tape record my presentation.

Q Is that your handwriting at the top?

A No, it isn't, but I believe it is the section. I am not sure, but I think it is.

Q Do you know whose handwriting it is?

A No.

Q When was the last time you saw this after you left the company?

A I saw it from time to time until about the time I did leave the company.

Q You left the company in 1973?

A Right.

Q The next time you saw it was in the U.S.

Attorney's office?

A That's right, sir.

Q You have no recollection of this particular handwriting being on it, do you?

A I remember that this thing was reproduced by Xerox or some photostat copy to be given --

Q You have no particular recollection of this particular handwriting being placed --

THE COURT: You interrupted the witness' answer, Mr. Arkin.

A Unless somebody else wrote my name on it, sir, I would say no. I would say this is the same presentation. I think the reason I was asked to tape record the conversation and then it was put into print this way was for new managers that were coming in.

MR. ARKIN: Your Honor, we are unable to date the particular time this presentation was used. I suggest there is no proper foundation.

THE COURT: The witness says August of 1972.

MR. ARKIN: He did not, your Honor. He says only that there is handwriting on it of which he has no recollection when that was placed upon it. Does your Honor care to see the document?

THE COURT: He said this was the one that was taped at his superior's direction in August of '72. That's his testimony.

MR. ARKIN: Your Honor, most respectfully, he says --

THE COURT: He is not relying on that.

MR. ARKIN: May we ask him that?

BY MR. ARKIN:

Q Are you relying upon the handwriting that appears at the top of the page?

A No.

THE COURT: You didn't listen to his testimony, Mr. Arkin.

MR. ARKIN: In that event, your Honor, I have no objection.

THE COURT: For how long before August of 1972 did you use the same presentation as was in there?

THE WITNESS: I would say from the day that I became a manager.

THE COURT: Were there changes made in it?

THE WITNESS: Only in terms of growth, your Honor, as far as updating what was happening within the community of Rio Rancho Estates, like shopping centers, more homes and things like that.

THE COURT: That's all?

THE WITNESS: That's all.

THE COURT: All right.

XXX (Government's Exhibit 314 received in evidence.)

THE COURT: We will have a short recess.

(Recess.)

(Continued on next page.)

(In open court - jury present.)

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Bondy, using Government's Exhibit 314 -- is it still there in front of you?

A It was taken away.

(Document handed to witness.)

Q Mr. Bondy, using 314 to the extent you find it necessary, could you now deliver for us the first speech that you gave at these dinner parties when you were a team captain?

THE COURT: You mean you want him to read this whole thing?

MR. KAUFMAN: To the extent he has to read it, your Honor.

I would like him, as a former team captain, to give us the dinner presentation as they were delivered at the dinner parties.

THE COURT: How many pages has he got there?

MR. KAUFMAN: 12 pages, your Honor.

THE COURT: Maybe they can read it during a recess.

MR. KAUFMAN: Your Honor, can I make an off at the side bar.

THE COURT: No.

You got it in evidence, the jury can read it at the recess.

MR. KAUFMAN: Your Honor,what we would like to do is reconstruct as best as possible a dinner presentation.

THE COURT: I don't want him to act up here.

MR. KAUFMAN: To the extent he acted at the dinner party.

THE COURT: I am sorry. You have put this into evidence. The jury may read it in the recess this afternoon.

MR. FLEMING: Your Honor, I would ask Mr. Kaufman to be instructed to refrain from comments which are not in evidence.

THE COURT: Strike his comment to the extent that he acted.

Q Mr. Bondy, about how long was the first speech that you gave?

A This presentation is given in segments. I would venture to say that the first part that you just wanted me to go through would take approximately three minutes.

Q And was there any mention in that first three minute speech concerning Albuquerque's growth?

MR. FLEMING: It is in the document.

A Yes.

THE COURT: The document speaks for itself, Mr. Kaufman.

Q What happened at the end of this first three minute speech?

A We would sit down and have dinner.

Q Can you look at 314 and see if that is accurate?

A Well, I would give this presentation, we would show a film and then we would go into dinner.

I would come back for just a minute, tell them that dinner was being served.

Q A film was being shown before dinner?

A That's right.

Q And what film was that?

A I believe the first film was The West Side Story, if I'm not mistaken.

Q Did you review a film in the U.S. Attorney's office this morning?

A Yes.

Q And what film was that?

A The West Side Story. I believe the first film is The West Side Story, if I'm not mistaken.

Q And was that film an accurate depiction of the film The West Side Story that was shown at the dinner parties that you attended?

A Yes, sir, exactly.

THE COURT: I gather the witness initialed something that he was shown this morning?

MR. KAUFMAN: Yes, your Honor.

The witness initialed --

THE COURT: What did he initial, what exhibit?

MR. KAUFMAN: The can in which the reel was contained, Exhibit 70.

THE COURT: That is already in evidence?

MR. KAUFMAN: Yes, your Honor.

Q Do your initials appear on there, Mr. Bondy (indicating)?

A Yes, sir.

MR. KAUFMAN: The government will make the representation that this film that is now on the projector was in the can this morning.

THE COURT: All right.

MR. KAUFMAN: At this time we would like to play the film, your Honor.

THE COURT: You may.

MR. FLEMING: Your Honor, may we just move down a little to see this?

THE COURT: Certainly.

(Pause.)

(A portion of Government's Exhibit No. 70 was played to the jury.)

MR. KAUFMAN: Your Honor, may I make an application at the side bar?

THE COURT: Yes.

(At the side bar.)

MR. KAUFMAN: Your Honor, it is important that these films be shown to the jury in the context that they were shown to customers at dinner parties.

They were not shown to customers without qualifying speeches and presentations made by the dinner speaker, yet that is how we are now being forced to show it to the jury.

THE COURT: That's the way you are going to show it to the jury.

MR. KAUFMAN: Your Honor, that is not an accurate reflection.

THE COURT: Was there any interruption of this film?

MR. KAUFMAN: Not in the middle of the film, but that was qualifying language before and after.

THE COURT: And that is in this exhibit you had marked in evidence?

MR. KAUFMAN: Yes, your Honor, but --

THE COURT: All right. That is the end of that.

MR. GLENDON: Judge, I wonder, would it be possible to have the film slowed down at the point so we can find and photostat the NYA number I mentioned to you this morning? It goes through so fast --

THE COURT: You can pick it up later.

(In open court.)

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Bondy, I gather in your first speech, you introduced this film in a certain way, is that correct?

A Correct, sir.

Q Do you recall what you said in connection with who produced this film?

THE COURT: Isn't that all in the Exhibit 314?

THE WITNESS: Yes, it is.

MR. KAUFMAN: It is, your Honor, but we have to refer to it as the subject matter is fresh in our minds. I think it is a lot more enlightening to do it that way.

THE COURT: Go ahead.

Q Mr. Bondy, did you see anything in connection with who had produced this film?

A I believe that I mentioned in my presentation that the film was not produced by our company, that it was produced by an independent film manufacturer.

THE COURT: Doesn't the film itself indicate who did it?

MR. KAUFMAN: I think it says --

THE COURT: That is the legend in the front.

MR. KAUFMAN: I think it says produced by the West Side Association.

THE COURT: That's right. Why do we have to ask him for? We saw it.

(Continued on next page.)

Q Mr. Bondy, were you aware whether or not the AMREP organization was involved in the production of that film?

A I'm not sure, sir.

Q I gather you made another very short speech after that film was shown?

A Yes, I did.

THE COURT: Not what you gather, ask him what he did next.

Q Mr. Bondy, what happened after the film was shown?

A After the film, I asked the people how they enjoyed the film. I also made them aware that there is some literature that is going to be distributed among them. I asked them to read it.

Q Did you direct their attention to any particular piece of --

A Yes, I did.

I directed them to the brochure that was an exhibit prior to recess, "This Is My Land", and I also called the attention to pages 7, 8 and 9 of that brochure, especially page 9, and I indicated to the people that were visiting with us that evening of the profits that were made in terms of sales and resales of real estate transactio in and around the City of Albuquerque.

Q And page 9 was the page with the different examples of other real estate transactions?

A Right.

THE COURT: Isn't it the same page 9 that [illegible]s read to the jury last week?

MR. KAUFMAN: Yes, your Honor. I am not reading it now.

Q What happened after that short speech, Mr. Bondy?

A We sat down and we had dinner.

Q And how much time was set aside for dinner?

A We tried to do it in forty-five minutes.

I would say that dinner was served about 7:30. We would try to get started by no later than quarter after eight, depending on the amount of people we had in the room.

It was also my responsibility to rush the waiters through so we can get it done. We were not in the catering service, we were in the real estate business. Time was of the essence.

Q After dinner, what happened?

A After dinner, I would come back, make another presentation and talk a little bit about the industrial growth, the climate of the city, some of the things that are taking place in and around about the City of Albuquerque.

Basically, just leading up to the second film, which is a film that was produced by our company.

Q Did you also talk about investment in that speech besides Albuquerque?

MR. FLEMING: It speaks for itself, if your Honor please.

A Yes, I did.

THE COURT: Isn't this 314?

There is something similar 314 that is already in under Mandel's testimony?

MR. KAUFMAN: I think it is another script, your Honor.

THE COURT: The same thing, isn't it? Mandel said you couldn't deviate from it, here it is, here is the package, and you read this and nothing else.

Did you make up what you read or did you read what you were told to read?

THE WITNESS: I read what I was instructed to read, your Honor.

THE COURT: All right.

We have had that from Mandel.

MR. KAUFMAN: Your Honor, Mandel, I think, left the company earlier than Mr. Bondy did. Mr. Bondy stayed with the company --

THE COURT: Mr. Bondy was there during the whole time Mandel was there and I am assuming you are having him testify not only about 1973.

MR. KAUFMAN: No, your Honor. I think Mr. Mandel left in 1970.

THE COURT: Right. He was there and he was a manager then.

MR. KAUFMAN: I think the presentation Mr. Mandel identified he attributed to the year 1968, I believe, before Mr. Bondy --

THE COURT: You have represented to the Court, you bought out through the witness there were no substantial changes in any of these presentations. That is the basis upon which it was let in.

The fundamental fact is that these presentations were made according to materials that were given to the managers by the home office.

MR. KAUFMAN: That's correct, your Honor.

THE COURT: And they were told not to deviate from them, and you have in the record that they didn't deviate from them and every one is practically the same, except for some possible updating of growth figures within

Albuquerque.

So whether he was there in 1970 or 1973 makes no difference under your theory for the presentation of this evidence, Mr. Kaufman.

MR. KAUFMAN: Mr. Mandel couldn't take --

THE COURT: Proceed, Mr. Kaufman.

Q Mr. Bondy, I believe you testifed that investment was an inducement for people to buy this land; is that correct?

A Yes, sir.

Q Let me read from a part of 314.

MR. FLEMING: If your Honor please, as I understand it, your Honor has ruled on the use of this exhibit. It is in evidence and your Honor said the jury may read it.

THE COURT: It is in evidence and he has testified.

Now, what more do you want?

MR. KAUFMAN: I want to refer to just a part of it, your Honor.

THE COURT: For what purpose?

MR. KAUFMAN: To lay the basis for --

THE COURT: Ask the question.

MR. KAUFMAN: Your Honor, the question I want to ask can't be asked without reference to what was said in the presentation.

THE COURT: Ask the question.

Q Mr. Bondy, I believe in your presentation you state that AMREP Corporation is responsible for building some very fine communities in the State of Florida.

A Yes, sir. That was part of my presentation.

Q Do you know what communities those were?

A We were talking about one community that is still in existence, and that is Silver Springs Shores, which is outside of Ocala, Florida.

Q And was there a community that preceded Silver Springs Shores?

A Yes, it was. Rainbow Lakes Estate was the name of the community.

Q You also said in your presentation that "All our efforts are within Rio Rancho Estates."

Do you recall that?

A Yes. But what I mean as ATC, all our efforts are within Rio Rancho Estates, because that is theonly thing that ATC was selling was Rio Rancho Estates.

Q Your speech was, "Also the AMREP Corporation is responsible for building some very fine communities throughout the State of Florida. Of course, now all our efforts are within Rio Rancho Estates."

MR. ARKIN: If your Honor please, the witness has answered that question. This is very argumentative.

THE COURT: It is not argumentative, but you got before this jury that this was all written and circulated to brokers, whether they were ATC or AFG or QED.

It is in the record.

MR. KAUFMAN: Your Honor, the speech is in the record referring to that AMREP was developing a lot of other communities, "But now we are concentrating on Rio Rancho Estates."

In order to focus that part of the speech in this witness' mind --

MR. FLEMING: Your Honor, that is about the fourth time, if your Honor please.

THE COURT: Sustained. Stop it.

MR. ARKIN: The witness interpreted it all right.

THE COURT: You got before this jury last week and through this witness what he was given to say. It's there.

Q At the end of this speech, Mr. Bondy, what happened?

A We showed another film.

Q And what film was that?

A I believe the title is "Your Golden Future".

Q And did you see that film this morning?

A Yes, sir.

Q And did that film accurately portray --

A Yes, sir.

Q -- what was shown at the dinner party?

A Yes, sir.

MR. KAUFMAN: Your Honor, at this time we would like to pay "Your Golden Future".

THE COURT: Is this the one you saw this morning?

THE WITNESS: Yes, sir.

THE COURT: Did you initial the can?

THE WITNESS: Yes, sir. Yes, sir.

THE COURT: All right.

(Part of Government Exhibit 70 was played to the jury)

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THE COURT: You may proceed.

BY MR. KAUFMAN:

Q Mr. Bondy, when that film was over, what happened?

A We usually got a round of applause.

Q Who usually led the round of applause?

A I did by asking the people how they enjoyed the film.

Q What happened after the round of applause?

A I would go into a close.

Q By a close what do you mean?

A We would get into the selling aspect of Rio Rancho Estates.

Q Was this another speech by yourself?

A It is all included in here.

Q About how long did that close last?

A I would say a good twenty minutes.

Q When your twenty minute close speech was finished, what happen d?

A Well, after I finished speaking, normally it was the consultant, the land consultant's responsibility to go into a close with the people he was sitting with at the tables.

Q What did he do?

A That was handled various ways. If the individual had more than one couple at the table, he would take them to a closing table, to get them away from the dirty dishes so to speak.

Q Before the salesman started to close, did anything else happen?

A Yes.

Q What happened?

A For one thing, I would go through the allocatio sheet, I would go through the purchase agreement, which would indicate, as it did toward the end of the film, that the buyer has six months to visit the property and if not satisfied a refund would be made.

Q I don't think the film indicated who the expense of that tour was, did you say so in your speech?

A Yes.

Q Whose was it?

A The customer's.

Q Do you remember telling them how much it would cost?

A It would fluctuate depending on air costs.

Q About how much wouldit cost?

A I believe for two people, this is all expenses paid including the airfare, I think it was something like

$465 or $495 per couple and it was for four or five days.

Q What happened after you said your last thank you very much to the people?

A It was part of our sales training to call holds from the allocation sheet.

Q Explain what happened when holds were called?

A The land consultant would jump up and call a hold on a particular parcel of land that was indicated on the allocation sheet.

THE COURT: You say it was a part of your training to call a hold. What do you mean it was a part ofyour training?

THE WITNESS: This was a necessary requirement. It was all in our training that we got from the people that we worked for.

THE COURT: I am asking you what that training was.

THE WITNESS: The training was quite extensive. Do you want me to go into it from soup or nuts?

THE COURT: No, I want to know about this device of calling holds.

THE WITNESS: The device of calling holds was an urgency type of a situation where we would get the people enthusiastic by creating an urgency by calling a hold on a particular piece of property that was indicated on an allocation sheet.

The allocation sheet showed the area, the size and the price and the monthly payments as well as the down payment on this allocation sheet.

It was used as an urgency type of a thing to stimulate the sales.

THE COURT: You mean the salesman called hold without anyone ever having indicated any interest in a particular allocation?

THE WITNESS: No, because the allocations were first brought out just a few moments prior to that. Everything was segmented.

THE COURT: What do you mean by the allocations were brought out?

THE WITNESS: Well, toward the ending, after the film was over --

THE COURT: The film is over and your speech was concluded as in Exhibit 314.

THE WITNESS: Part of that is that first I bring out the contracts. The contracts are not on the table at this time. They are in the possession of the land consultant.

THE COURT: Right.

THE WITNESS: We would hand to each of the customers a purchase agreement, reservation and purchase agreement which would indicate the six months guarantee and I would read out loud the six months guarantee.

THE COURT: You distributed the purchase agreement and you brought their attention to it?

THE WITNESS: Right, to the six months guarantee.

Immediately after reading the six months refund guarantee we would again distribute among the people at the tables an allocation sheet.

I would use one of these allocation sheets, as an example, I would read it and explain it as I went along.

THE COURT: So that each person at the dinner would have a copy of this allocation sheet?

THE WITNESS: Yes.

THE COURT: And would know what you were talking about?

THE WITNESS: Right, sir.

THE COURT: What next?

THE WITNESS: When we were all finished, because this was one of the last things that we did at the dinner party, was that the salesman, the land consultants were instructed to call a hold.

THE COURT: They were instructed to call a hold?

THE WITNESS: Yes.

THE COURT: Were they instructed to call a hold on any conditions or any set of conditions or just yell hold?

THE WITNESS: Just a particular parcel that they thought that they would discuss with their client that evening.

THE COURT: Which they made up in their minds they would discuss with the client?

THE WITNESS: Right, but the allocation was an actual allocation on the sheet. It wasn't a hypothetical thing.

THE COURT: I understand you had a sheet for all the various properties that were available for sale?

THE WITNESS: Right.

THE COURT: You say these land consultants were trained when you got finished with your closing presentation to call hold on a particular property or lot on the allocation sheet?

THE WITNESS: Right, sir.

THE COURT: Was this calling out whether or not anybody at the table had indicated any interest in that property?

THE WITNESS: No, sir. That was something that was discussed after the calling of the holds. We took the clients by couples from that particular table especially if there were other clients, you didn't want to discuss any business in front of a strange couple.

You were going to be talking about money so we took him to what we call closing tables. We always made sure that we had small empty tables throughout the restaurant or catering establishment that we were using that particular evening for this purpose.

THE COURT: I repeat my question.

When a salesman called hold on Lot 465, he was the one who determined --

THE WITNESS: Yes, sir.

THE COURT: To designate that lot was the hold lot?

THE WITNESS: Right, sir.

THE COURT: All right, go ahead.

BY MR. KAUFMAN:

Q Mr. Bondy, in your speech and on the film there is mention of development that had already taken place at Rio Rancho, is that right?

A Would you repeat the question?

Q In your presentations and on the film there was mention of the development that had already taken place at Rio Rancho, is that correct?

A I don't quite understand. I hear you, but I don't quite understand what you mean.

Q Did your presentations discuss what had already happened at Rio Rancho in terms of development, in other words, houses had been built, community centers had been built?

A Oh, yes. As a matter of fact, again, in this particular 314 in the manager's presentation, we also update the film because this film was produced as you notice in 1969. I left the firm in 1973.

During the course of 1971 and 1972 we would update the film by talking about the shopping center, which was not indicated in the film. The country club, which was not shown in any depth on the film. The homes around the golf course area which had been established, yes.

end t5a

Q How big was the Rio Rancho property when you first went to work for ATC?

A I don't recall. I think it was something like 55, 60,000 acres and then we bought some additional property.

Q Do you recall what the total became after the additional purchase?

A I think it was something around 95,000 acres, 92,000 acres, but these are figures that I may not be accurate with.

Q Do you know how much of the total Rio Rancho property was occupied by the developed portion of the property which you talked about in your speech?

MR. ARKIN: May we have a time, your Honor.

THE COURT: Yes.

Q Say at the time just before you left in late '72, early '73?

A Yes.

Q Approximately what per cent of the total Rio Rancho property, the 95,000 acres, was occupied by the developed portion, if you know?

A I couldn't give it to you in terms of percentages.

Q How would you describe it?

A I would say that we were building in about four or five various building areas. What we mean by building areas is that in these areas we had the utilities, the sewer, the water and phone and electricity lines and it represented a small percentage.

Q A small percentage?

A A very small percentage.

Q Mr. Bondy, I believe the film depicted the developed portion of Rio Rancho with paved roads, is that right?

A Yes.

Q Did paved roads exist throughout Rio Rancho Estates?

A No, sir, they did not and we never told the customers that they did.

Q What type of roads were there?

A They were sandy roads. They were not blacktopped or paved, if that's what you mean. There was a word which we used to use which escapes me, macadam --

Q Caliche?

A Which basically means it has not been hard filled.

Q Basically a dirt road?

A You could say that.

Q Did customers ever ask about the type of roads that existed at Rio Rancho Estates?

A From time to time they did. We would only answer questions as they came up from the customer, but you must remember that most of our customers from time to time did go down to visit and they would be shown the property as well.

Q Referring to customers who were at a dinner for the first time, were questions ever asked as to what type of roads existed at Rio Rancho?

A From time to time, if the question came up by the customer it would be answered.

Q How would you answer it as a land consultant or a team captain?

A Very simply, where homes prevail we do have black-topped roads. In areas where we are not bidding, they will be black-topped as we do come through and build the area up.

Q Was that accurate with --

A To the best of my knowledge it was.

Q Do you know whether or not the company had an obligation to provide paved roads in the building areas?

A I think --

THE COURT: Wait.

MR. ARKIN: Your Honor, that calls for a legal conclusion.

THE COURT: The witness has said that they told the prospective buyers that they had paved roads in the developed areas.

Are you trying to show they didn't or that they had no obligation to put paved roads in the developed areas?

MR. KAUFMAN: I will reframe the question, your Honor.

Q Do you know whether or not the company had any obligation to provide paved roads outside of the immediate building areas?

MR. ARKIN: Objection.

THE COURT: Under the contract?

MR. KAUFMAN: Yes.

THE COURT: The contract speaks for itself I woul assume. His opinion doesn't mean anything.

MR. KAUFMAN: It is more than opinion, I am asking whether or not he knew.

THE COURT: It is the contract. The contract speaks for itself. He is not a lawyer.

Q Mr. Bondy, in your final speech at the dinner parties did you refer to the term leverage?

A Yes, sir. The word actually was financial leverage.

Q Can you explain to us what financial leverage was?

MR. FLEMING: Object to that.

THE COURT: Overruled. He used the words, he can explain what he meant by them and what he said.

MR. FLEMING: My objection is whatever he said he said.

THE COURT: I don't know.

Q Can you explain to us what you meant by financial leverage?

A What we meant by financial leverage is that we afforded the individual an opportunity where for a small down payment and small monthly payments he can own and control real estate worth several thousand dollars.

Q Was that compared to other types of investments?

A Yes, such as mutual funds.

Q What other types of investments?

A Wall Street, stock market.

Q Did you compare the different rates of returns on those different types of investments?

A Not specifically. I only touched base on that.

Q What do you mean by touching base on it?

A Just to give them an example that if you were to buy, let's say, mutual funds and you were on a plan where you would pay $20 a month, for example, that you would own and control only $20 worth of mutual funds whereas for that same $20 you would own and control real estate worth several thousand dollars.

Q Mr. Bondy, just before you were discussing the allocation sheet that you and the land consultants took out and utilized. Was that the only allocation sheet used at the dinner?

A Most of the time. There were other times where -- I think I have to explain the question. May I, your Honor?

THE COURT: No, you have to ask him to explain the question.

A May I dwell further on the question?

Q Please do.

A Okay.

As in all such sales techniques there is a certain amount of -- I don't want to use the words gimickry, but it is used by everybody, some of your largest companies.

What we used to do for our special clients, what I mean by special clients are people who already owned Rio Rancho property and they were reinvited to our dinners and from time to time managers were given special allocations which we kept in our vest or inside jacket pocket.

Q What was special about this special allocation sheet?

A Sometimes it was special because often or not we would have certain properties that were not on the allocation sheet, like commercial property, multiple property and often or not it only created an illusion of special because we would have different units for sale that did not appear on that day's events on the allocation sheet.

Q When you say an illusion of being special, what do you mean by that?

A Simply because they were strictly residential property and we would talk to them about it being something special because they were not available on the allocation sheet.

Q In reality, was there anything special about the land on the special sheet in contrast --

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

Q In contrast to the land on the regular allocation sheet?

A Sometimes. Sometimes not. It depends -- sometimes they would be closer into where the future growth was going to be coming in sooner than later.

THE COURT: We will suspend for lunch. Return at 2:15.

(Luncheon recess.)

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AFTERNOON SESSION

2:45 p.m.

(In the robing room; counsel present.)

MR. KAUFMAN: Your Honor, the government would like to distribute copies of the transcript of Mr. Bondy's presentation, Exhibit 314, to the jury.

Your Honor had said this morning that we will give it to the jury and let them read it during the recess.

THE COURT: Yes.

MR. KAUFMAN: I don't think the jury, unless we are having a prolonged recess, should be forced to spend the necessary 15 or 20 minutes reading the script and do that instead of taking a cigarette break or going to the john or whatever it is --

THE COURT: I do it all the time, Mr. Kaufman.

MR. KAUFMAN: Your Honor, I am not sure that we can expect the jury to utilize --

THE COURT: That is my function, Mr. Kaufman, not yours.

MR. KAUFMAN: I am making the application, your Honor.

THE COURT: Denied.

MS. HYNES: Your Honor, may I just add to this that this is an important piece of evidence.

We now have the film in evidence which is part of the sales presentation. The speaker's script has been given. There has been a lot of testimony on it and it is a very important piece of evidence.

I think the jury is entitled to have that evidence -- we are entitled, the government is entitled to have that evidence in front of the jury in its entirety. It is very possible --

THE COURT: They have been given it in its entirety.

MS. HYNES: It is not being given in the context of a trial but a break in the trial when --

THE COURT: I do it all the time, Ms. Hynes. There is no point in doing it. You have had an exhibit just like this in since last week exactly.

MS. HYNES: But, your Honor, we have not been able to read it. Your Honor did not allow us to read it to the jury.

THE COURT: They can read it as well as you can. The point is, what is its content? They will read the content. That is over with.

What other objection do you have?

MS. HYNES: My next application is for your Honor to instruct the jury that on their recess they must read Exhibit 314, because if the point is that that's the only way that they are going to know what is in Exhibit 314, then they have to have an instruction from the court to read 314.

THE COURT: I will instruct them.

Do you have 18 copies to give them?

MS. HYNES: Yes.

THE COURT: Give it to them.

MS. HYNES: I have one other application, and that is last Friday the juror -- I don't remember what number she is, but it is Mrs. Marks -- had previously, before Friday, been in the general hallway outside the courtroom and not by the jury room. We mentioned that to the court clerk.

Then on Friday I went into the ladies' room and Mrs. Marks was there and was talking to Mrs. Oberman, one of the defendant's wives. They were talking about the weather, but the point is a juror should not be in a public place particularly where defendants' relatives or counsel would be.

I mentioned that to the court clerk on Friday afternoon. At the end of Friday afternoon, the court clerk advised me that he told Mrs. Marks that the government was upset by the fact that Mrs. Marks was in the ladies' room other than the jury room.

My application is for the court to make the instruction to the jury that they should use their own facilities and not mingle outside.

I realize we are going downstairs to 318 tomorrow and the problem will be alleviated somewhat I hope, but we still have a record where a juror is told that it is the government that is upset by it when, in fact, we ask the court to instruct that the jurors should stay in the jury room adn not be in a public facility.

THE COURT: Okay. What else?

All right, let's go.

MS. HYNES: That's it, Judge.

(In open court; jury present.)

OTTO STEVE BONDY, resumed.

THE COURT: You may proceed.

MR. KAUFMAN: Thank you, your Honor.

DIRECT EXAMINATION (Continued)

BY MR. KAUFMAN:

Q Mr. Bondy, I believe you mentioned that the allocation sheet gave the price of the particular lots that were available, is that right?

A Right. Yes, sir.

Q During the dinner presentation, was the history of price increases at Rio Rancho ever reviewed?

A Not so much verbally as it was in the film that we have just shown prior to recess.

Q Did sales people ever have old issues of price schedules at the dinner presentations?

A Yes.

Q And how were those old price schedules utilized?

A Well, they were -- they were a good tool to show past performances and profit -- rather, in price increases within Rio Rancho Estates since its inception.

Q In other words, that showed how the prices on the pieces of land had gone up over the years?

A Yes, sir.

Q Were prospective price increases ever mentioned at the dinner party?

A When there was an impending price increase, we made our property owners aware.

Q And how did that happen at the dinner?

A Well, we would mention on a particular date there would be a price increase, depending on what the price increase would be. We would usually be told in terms of percentage. Usually it was 5 or 10 per cent increase over the prevailing price.

Q And were those price increases -- withdrawn.

Were the prices regularly increased during your employment at ATC?

A I would say at least once a year.

Q During the time you worked for ATC, were you aware of whether there was a resale market for land at Rio Rancho?

A No, sir.

Q No, you were not aware or, no, there was no resale market?

A There was no resale --

THE COURT: Your question was, was he aware of one?

Q Were you aware, Mr. Bondy?

A That there was one?

Q Whether or not there was a resale market.

A I was aware that there was no resale market, an outlet for resale, let's say.

Q And how were you so aware of that?

A We were simply instructed at the time there was no resale market. We would be in direct competition with ourselves if we had one.

Q Who were you instructed by?

A By my immediate superior, who was Mr. Peter

Miller.

Q Did customers say anything about AMREP or ATC setting up a resale program?

A The only thing that was ever mentioned to the customers in terms of resale was that we told the customers that when we are finished selling Rio Rancho Estates, we would probably set up a resale office.

THE COURT: Wait. Does that mean they also knew that there was no resale market for them?

THE WITNESS: That's right.

Q Mr. Bondy, after the holds were called out, what happened?

A Well, as I explained to you, the room dispersed in terms of people pairing up, the land consultants pairing up with individual couples to take them to closing tables.

In most cases, there was more than one couple at a dinner. The other couple may very well have been a present customer that was brought in as a referral. And it added a lot of credibility in our presentation.

We would ask these people to get up and say what they seen while they visited the community of Rio Rancho Estates and it was a good selling tool.

As a matter of fact, a larger percentage of our sales came from the referrals of these so-called satisfied customers that went and visited Rio Rancho.

Q Were those satisfied customers people who had bought land and still owned the land?

A That's right. It's the only way you stay satisfied, by keeping it.

Q Were there any satisfied customers who had bought the land later on and resold it and made money?

A Not to my knowledge, sir.

Q You said something about taking the customer to a closing table to make this sale, is that right?

A Right. That is an expression that we used to get away from the dishes to assure ourselves privately so we can talk one on one, the land consultant with that couple, and in just about all cases it was couples.

Q And what was the salesman supposed to do when he got the customer to the closing table?

A He had one ulterior objective and that is to make the sale to that individual if he could.

Q Did the salesmen start to fill out the contract?

A That may have been one of his approaches.

Q I believe you mentioned earlier that part of your training included instructions as to common objections.

Do you recall that?

A You mean offer common objections, is that what you are talking about?

Q Yes, yes.

A Yes.

Q What were the common objections that salesmen received from customers?

A The most common objections that you would receive is that, "I have to see it before I buy it. I would like my attorney to look at the contract. I cannot make a decision this evening."

Sometimes it would be money, that the individual just didn't have the money to go into such an investment or into such a purchase.

Q And how were you trained to overcome those objections?

A Well, let us take the case of, "I can't make decision without seeing something."

We would, again, always refer to that six months guarantee clause and say, "Look, you have a full half a year from today, whenever it is convenient for you, to get on one of our tours or you can meet one of our tours," because from time to time you would get a client who objects to flying; they can hook onto the tour by getting on their own steam, by car, by bus or by train, whatever, and the whole concept was seeing it while they were joining one of our tours.

Q Was that the main way to overcome all the objections that you received?

A I think so.

Q Are you familiar with the concept of the takeover?

A You mean a TO?

Q Yes.

A Yes. A takeover, basically means, let us say the salesman needs a little more strength, so he brings in what we used to call the heavy artillery by bringing in a manager or something like that to overcome an objection.

For example, let us say that a person won't have the necessary down payment, so to add credibility to show the client that we want to work very closely with him, we will say, "Well, look, how much money can you spare now?"

Let's say he can only come up with a percentage of the down payment.

The sales manager would take a check or a promissory note and, let's say, within 30 or 60 days, if the customer is willing to come up with the balance of the down payment, we would give him that deferment.

Q As the team captain, I gather you constituted that heavy artillery, is that right?

A That was part of my right.

Q And was part of the TO the utilization of that special allocation sheet that you carried around?

A That special allocation sheet would not work with somebody that you would meet the first time, because, really, he had nothing to hand his hat on. This you would use mostly on our property owners.

You would say, "Look, I have a piece of commercial property. When did you hear us having a piece of commercial property in the last few months?"

I mean, something that you are offering as a special is meaningless unless somebody can relate to the product in more depth than somebody that came to a dinner for the very first time.

Q Why was commercial property depicted as being a special piece of property?

A Well, in the first place, it is zoned differently, it's income producing property where an individual could eventually, once that area is built up, put in a store or gas station, whatever that particular property is allocated with zoning, plus it is the old case of supply and demand.

We just ran out of commercial property. We had much more residential property than you had commercial, so it was treated as an extra type of allocation simply because there just wasn't that much around.

Q Was it presented as even a better investment than residential land?

A Yes.

Q Was there an exchange privilege with the commercial property?

A No.

Q Tell us what the exchange privilege was with respect to residential property.

A The exchange privilege in residential property -- and this is within the contract -- states that when a customer is ready -- when a buyer is ready to build a home, we will exchange a lot of comparative value.

Now, comparative value, the way we described it, meant in terms of valuation, it does not mean, let's say, a half acre for a half acre or an acre for an acre. It would just mean, like, a price value.

But there were many areas within Rio Rancho Estates that were set aside where there would be an equal exchange with no further money.

Q When you first began to work at ATC, was that the language of the exchange privilege, comparative value?

A No. That was something that was rewritten within the contract.

At one time -- I'm not sure, I don't know whether the word was equal value, but it was changed from something to comparative value, and the reason for that is that in a lot of the building areas, they were not in terms of size, the value. The value was because of the utilities being in there and it was closer to the golf course, closer to the city, closer to the main gate.

(Continued on next page.)

Q And how much of the land that a HSO owned could the HSO trade in to put up a house?

MR. ARKIN: Objection, your Honor. This has been asked and answered many times. It is a contractual provision.

THE COURT: He is asking this witness. He has not asked him many times.

A Only a half acre.

Q Mr. Bondy, if a land consultant were successful in making a sale, would he announce anything there in the room?

A Yes, sir. He would call a deletion.

Q When you say deletion, what do you mean?

A He would make the room aware by addressing me ofthe fact that he is deleting a particular parcel of land from that allocation sheet.

Q And that indicated that a sale had been made, is that right?

A Right.

Q Were those deletion calls always accurate?

A No.

Q Tell us in what way they were not accurate.

A Well, from time to time, we would have a poor turnout because of, let's say, weather, it rained very hard, so we would have maybe three, four couples in a room and you couldn't create and generate the excitement as you would if you had, say, twenty or thirty customers or potential customers, clients in the room.

So often I would abbreviate my presentation. The film would always stay the same, but I would shorten my presentation just because otherwise it was too much fanfare for a short number of people, and when we got to the point of selling at the end, often to add a little credibility to it, we would call a false deletion just to add credibility that someone in the room has made a purchase.

Q Would this be a couple that the salesman spent some time with and then escorted from the room?

A That's right.

Q And then what would the salesman do when he came back into the room?

THE COURT: Are you testifying or is the witness?

You are testifying.

Q Can you describe the mechanics of how the false deletions worked?

A One of the worse things that you can do in terms of a sales presentation is have somebody, just because you simply know they are not going to buy anything and say, "Well, thank you, Mr. and Mrs. Jones, for joining us this evening," and let them go out, because that just gives the other people an excuse to start an exodus.

So we were instructed to hold the people and talk about anything, the children, the car, the house, whatever, just to detain them for a few more minutes, and we would go through things like saying, "Well, do you know anybody else that may be interested in this program or somebody else that may be interested in Rio Rancho or Albuquerque or New Mexico?"

And we would just hold them for ten, fifteen minutes by making loose, idle conversation.

Then the salesman would walk them out to the door and very courteously say, "Thank you for coming," he would shake the hands of the couple, and after they got out of earshot he would come back and say, "Please delete."

The word "please" was our signal that it was a false deletion.

Q So in other words, the salesman in the room knew it was a false deletion?

A Right, just by offering the word "please".

Q Were you instructed in the use of that practice?

A Yes, I was.

Q Who instructed you?

A Mr. Peter Miller.

Q He was the general manager of ATC?

A Yes.

Q If a customer were willing to buy, what happened?

A If a customer was ready to buy?

Q Was willing to buy.

A We'd sell him.

Q He signed the contract?

A Oh, yes.

Q What happened after he signed the contract?

A Well, then various things.

We would make up a kit. There was a special kit that was made up which consisted of the property report, the offering statement, all the advertising paraphernalia that we used, plus the contract.

Q And that all went into the kit?

A That's right.

Q What was that called, do you recall?

A Well, we just called it a kit.

Q Are you familiar with the expression lit. pack?

A Lit. pack.

Q I believe you testified that in order to take advantage of the six month cancellation privilege, the customer had to go to Albuquerque, is that correct?

A It was spelled out that way. He had to make a physical registered inspection. It says so in the contract, sir.

Q And did AMREP conduct any program in connection with trips to Albuquerque?

A Yes, sir. We were very successful. We used to rent charters. We used to actually charter planes from commercial airlines, like American and United, TWA. We used to go there a minimum once a month.

Q What was the purpose of those tours?

A The purpose of the tours was actually twofold:

One, most importantly, was to solidify those people that were still within that six months cancellation, but we were very, very successful on our tours because we were not only looking to solidify the actual sale, but to upgrade, which is an expression that we used to try to sell that individual more property. And we were extremely successful with those tours.

Q Both in terms of solidification and upgrading?

A Yes, sir.

Q Did you ever go on any of those tours?

A Yes, sir.

Q About how many?

A About four.

Q Do you recall when the first one was?

A Yes, sir. It was July 1969.

Q How do you recall exactly when it was?

A Because the night that I came back from Albuquerque on my first tour, we had our first moon walk and that was July of 1969.

Q And did you go on that tour in any particular capacity, that first one?

A The very first one we didn't have -- we didn't have a tour department. We didn't have any specific individuals designated. So I went -- I was part of the -- I was a tour guide on that very first trip.

Q By the way, were you still a land consultant then or were you a team captain?

A Oh, yes, I was still a land consultant. I was selling.

Q And what were your duties as a tour guide on that tour?

A Well, to listen, to observe, also to screen out any negativism on the part of an individual and to make Mr. Miller aware if there was anybody disgruntled so we can sort of take the bad worm out of the basket of apples, so to speak.

Q What do you mean by screening out the negativis

A Let's say you would have a hundred people on a tour -- I am using an approximate figure -- and you would run across an individual that was unhappy; whatever he thought he didn't like about it, he would express openly. So we thought that he may be a contaminating factor, so we would week him out.

Q How would you weed him out?

A Oh, we would take him swimming or bowling or take him down to buy some trinkets. We had a way of segregating these people in a nice way.

Sometimes we would just hit him directly on and say, "Hey, look, that is your opinion. We just don't want you to broadcast it, you know. We respect what you are saying."

Q How long were these tours?

A Again, they fluctuated. Sometimes they would leave on a Thursday morning, sometimes they would leave on a Wednesday morning, sometimes they were three days, four days, five days, depending on what time of the year, and they would always be modified.

Most of them were four days.

Q Were the people on the -- withdrawn.

Were the activities of the people on the tour preplanned?

A Oh, yes.

As a matter of fact, once they arrived in Albuquerque and they checked into the hotel, be it the Panorama Inn, which was our very own motel on the property--sometimes we didn't have enough room so we used the Holiday Inn in town in the City of Albuquerque, we used various hotels -- they would get a complete itinerary. They would be assigned a bus.

We had our own buses. Again, depending on the size of the tour, we would use anywhere from one to four to five buses. And they would know exactly when breakfast was going to be served, when they were going to have lunch, rest periods, shopping, time for shopping.

From the time that we left until the time that we departed to come back home, everything was spelled out for them. Everything was scheduled.

Q And what type of activities were schedules for the people other than the meals and the shopping?

A Oh, we showed them a wonderful time. They loved it.

We used to take them to Santa Fe, for example, which was the state capitol. We would take them on our tram ride. We would take them to the Old Town where the city was first founded, where they can buy Mexican and Indian jewelry, the silver and the turquoise.

If the weather was right they could go swimming in the hotels if it was in the summertime.

Q When were the people taken to their property?

A Well, again, depending on the size of the tour. Sometimes it would be on the second day, the third day, the fourth day, depending. They would be going by buses.

Q Is there a lot of vacant land in and around Albuquerque?

A Well, if you get on a bus and you drive around --

MR. ARKIN: Your Honor, may we have "a lot" defined?

THE COURT: When?

MR. ARKIN: A lot.

I object.

THE COURT: First of all, I just know this man went in July of 1969. That is all you bought out so far.

Q Mr. Bondy, you said, I think, you went a total of four times.

A Four times.

Q When was the last time you were there?

A I believe the last time I went was September or October of 1972.

Q During the times that you were in Albuquerque, was vacant land in and about Albuquerque visible?

A To the eye, yes.

Q And how would you characterize the amount of vacant land that was visible?

THE COURT: I don't know what you mean by vacant land.

Is it owned by somebody, available for resale, maybe somebody owns it and does not want to sell it, maybe owned by the government and can't sell it?

MR. KAUFMAN: Your Honor, I have to lay the foundation for these questions.

THE COURT: Go ahead.

Q Mr. Bondy, how would you characterize the amount of vacant land that was visible?

A Well, to the individual that were to take a bus tour or just drive around Albuquerque, you would see a vast area of what you and I would call undeveloped land, but let's be realistic, that a lot of this land down there was federal land.

Q I understand. That is my next question.

Did customers ask about this vacant land?

A Yes. We would tell them that this was federal land. Some of this was used for cattle-driving, some of it was owned by local Indian tribes where there was probably no taxes paid on this land, it was just sitting there, but the land was not available for sale, it was government land.

Q Did you know of your own knowledge whether or not that vacant land that was visible was government land?

A I was told that it was.

Q Who were you told by?

A By Peter Miller.

THE COURT: You showed us a film, didn't you, government land on two sides?

Q Mr. Bondy, the source of your information was information --

THE COURT: This is awfully vague, Mr. Kaufman. I'm sorry.

MR. KAUFMAN: Your Honor, he testified that Peter Miller was his source and obviously the films as well.

I don't believe that is vague.

THE COURT: I don't think this is the man to prove or disprove how much vacant land there was available to people to buy, and if that isn't your point, let's go on to something else.

Merely looking does not mean there was vacant land for people to buy.

MR. KAUFMAN: We are not proving that, your Honor. But what we are proving is one of the allegations in the indictment to the extent of the knowledge of the sales people.

THE COURT: Then ask him the question, "Do you know how much was vacant?"

MR. KAUFMAN: Well, he knows how much was vacant by seeing--

THE COURT: Next question. Stop this line of inquiry.

Q On the day when the people were going to be taken to see their property, was there any system in decidin which people would go to their property first?

A Yes, sir.

Q And what was that system?

A Well, prior to the people going on tours, we had another survey. I don't know what the title of it was. I remember it was a blue form. And, basically, this was geared for the individual and his wife that was going to go on a specific tour and it told us, again, a little bit more.

It was, like, an update of the old confidential survey that he joined us at the dinners, what his likes were, dislikes were and everything else.

In addition to that, behind the scenes, the salesman had to submit to his sales manager, to his team captain, a little something of a personal background about the individual that he knows, because he invited him many times in the past to other dinners trying to get him to bring out his referrals, his friends and relatives and to find out what the man is looking for; if the man is looking for a job, to start a business; if he is going to retire, is he a policeman, is he working for the Department of Sanitation, how many years before he retires; does he want to build a home now, does he want to build a home in three years, do we feel that he has any open to buy, does he have any additional money where we may be able to upgrade him, which is to sell him additional property, a little background about the individual.

Depending on the individuals' personalities -- and there were quite a few -- these were the ones that were sorted by the tour director. At one time it was

Peter Miller, then a fellow by the name of Danny Monica became the tour director.

This information was sent to him and he made a determination as to who was going to be the first group of people that were going to be shown the property first.

And usually we were pretty accurate by our information. I mean, a few slipped by, there is no such a thing as a hundred percent being perfect, and naturally the enthusiasm as these people came off the property, there is something very contageous about the smile on a face, "Hey, I just saw my land and I just bought another $5,000 worth or I bought into the half acre or acre."

Success breeds success.

tlb

pm

Q Were the tour guides also used in evaluating which customers should go out to the land first?

A This was usually set up before we got down there or we would have a last meeting as soon as we had arrived in Albuquerque. The first day was like a relaxed day, we would take them out to the golf course and they had to have dinner at the country club.

MR. FLEMING: Could we have a responsive answer.

THE COURT: What was wrong with that?

MR. FLEMING: The witness goes on after he has answered the question.

THE COURT: Overruled.

Q Are you familiar with the concept of control?

A I think so.

Q What was the concept of control?

A Control of the people.

Q With respect to the tours.

A We kept them under control.

Q Was that an expressed policy of the company, this concept of control?

MR. FLEMING: Object to form.

A Yes, plus the fact that you had to keep things on schedule.

THE COURT: Wait, you are going all over the lot.

Reframe your question, Mr. Kaufman, bearing in mind what you are trying to find out.

Q With respect to the tours, was there something called the concept of control?

A Controlling the people?

Q Mr. Bondy, I cannot answer your question.

A I understand what the word "control" means.

Q I am asking was there an expressed policy of the company in terms of control with respect to the tours?

A Yes, definitely. They were on schedule so it was a controlled tour.

Q When you say on schedule, is that all that the concept of control referred to?

A The way you asked me the question, yes.

Q Was the schedule being controlled or were the customers being controlled or a combination of both?

A The customers were always kept busy showing them a good time. The customers paid almost $500 to go on a vacation, let's call it that for a moment,in spite of the fact that our purpose was to take them there to solidify their cancellation and also the ultimate goal was to sell the individual additional land. In many, many cases we did. We had tours where we brought back $300,000 so we had to do something right. Often there were as many as 300 people on these planes, during vacations, especially in the summer months.

Control in keeping the flock together on a schedule, yes.

THE COURT: Did you ever have any written schedules of a specific tour that went out; was it given to you, 9:00 o'clock here, 11:00 o'clock there, 1:00 o'clock, whatever it is.

THE WITNESS: No, the only thing we got was the number of people going, their names and how much property they owned in terms of size and dollars.

THE COURT: When you got there, they were you say given a good time?

THE WITNESS: Yes, sir.

THE COURT: Was that scheduled by hours?

THE WITNESS: Yes, sir.

THE COURT: Did they ever give you a written schedule as to any specific tour? How did you find out what you were supposed to do during the day?

THE WITNESS: Simply by following the schedule.

THE COURT: They gave you a schedule?

THE WITNESS: Yes, sir.

THE COURT: Do you have one?

THE WITNESS: No, sir.

THE COURT: Do you have one?

MR. KAUFMAN: Yes, your Honor.

THE COURT: Show it to the witness. Let's get an idea of what he is talking about.

MR. KAUFMAN: We were planning on introducing those types of schedules through a witness who was in charge of this.

THE COURT: Obviously you are wasting time asking this witness about it. If you don't think it is important, let's forget it and wait for some other witness.

You opened it up with him, let's find out. He has trouble understanding you and I have trouble understanding you and we know the only way to show it is through another witness.

Do you want to show it through another witness?

MR. KAUFMAN: Yes.

Q Other than the tours, did AMREP have any other programs to sell additional land to homesite owners?

A Yes, sir.

Q What were those other programs?

A We had a program that was very successful, it only ran for a few months called the VIP program. We served a buffet lunch during the work day, we invited people between 11:30 and 2:00 o'clock, this was something that was created by Mr. Leonard Geller, and he would tell them of the latest developments within Rio Rancho Estates as far as what was being built up, people being moved there to homes that were being built, also what the intent of the AMREP Corporation is in terms of future development and we would let them know that we had a particular piece of property that was never made available to the public before and as a property owner he was in a position to sell him additional land within this particular zone or area.

Q Who ran the VIP program when it was in existence?

A It was run by Leonard Geller.

Q Did he actually conduct the VIP presentation or was some sales person in charge?

A There was no presentation. The presentation was done on an individual basis. We would sit with them, we would keep the conversation off business. We were instructed to keep it off business and then one couple at a time we were bringing them into Mr. Leonard Geller's office and he would give an individual presentation to that particular client and his wife.

Q Was there any sales person designated as the VIP manager?

A I believe so.

Q Do you remember who that was?

A I believe that was a lady by the name of Charlotte Masone.

Q Was she a --

A Sid Masone, it was a husband and wife team.

Q Were they sales people for ATC Realty?

A Yes, both of them. Then I think one became a manager.

MR. KAUFMAN: Your Honor, at this time, the government offers Government Exhibit 535 for identification.

MR. ARKIN: Do you want to ask the witness to identify it first and then I will look at it.

MR. KAUFMAN: This is a company produced document, your Honor, off the list.

THE COURT: Show it to the witness and see if he can identify it.

Q Mr. Bondy, have you ever seen Government's Exhibit 535 before?

A I never saw this before, at least I don't recall it.

MR. KAUFMAN: The government renews its offer, your Honor.

MR. ARKIN: Your Honor, since this particular document is not recognized by the witness, I don't believe it is relevant at this time to be introduced.

THE COURT: Objection sustained.

MR. KAUFMAN: Your Honor, may we approach the side bar.

THE COURT: Yes.

(At the side bar)

MR. KAUFMAN: Your Honor, this is one of the many company produced documents which the defense have not stipulated to on authenticity grounds and your Honor has not ruled previously with respect to these.

The government has never submitted that we need to have this specifically identified by any witness on the stand. This is a company produced document. On its face it appears to be authentic.

The contents of it are corroborated by what Mr. Bondy testified to with respect to Miss Masone being the VIP manager.

As Judge Ryan said in the Imperial Chemical case, the only contrary explanation to authenticity would be that this is a forgery and that is not a conceivable alternative.

Once it is authentic, it becomes admissible under Rule 801 as an admission against the party against whom it is offered, a statement of the party against whom it is offered and it is relevant at this time because Mr. Bondy has just testified aboutthe VIP program.

MR. ARKIN: Miss Masone is a witness on the will-call list. It seems to me if that relates to her, that seems to me to be an appropriate time to introduce it.

MR. KAUFMAN: She didn't identify this memo. She didn't write it or receive it.

MR. FLEMING: It is admissible against Peter Miller.

MR. ARKIN: He is dead, your Honor.

MR. KAUFMAN: He was the general manager of ATC, your Honor.

MR. FLEMING: I don't think that is admissible against ATC at all.

MR. ARKIN: I don't see how.

MR. KAUFMAN: There is a cc on those memos to Dan Friedman. It is also admissible for that reason.

THE COURT: I gather there was no objection on authenticity on 535 on my list.

MR. ARKIN: Mr. Kaufman said this was not considered in that context, is that correct, Mr. Kaufman?

THE COURT: No, there was no objection to authenticity on this.

MR. ARKIN: At this particular point --

THE COURT: It is authentic. What is your next point.

MR. ARKIN: My next point is with respect to this particular witness, it is not relevant to his particula testimony.

THE COURT: Overruled.

(In open court)

(Government Exhibit 535 received in evidence)

MR. KAUFMAN: Your Honor, there are three memos here as part of Exhibit 535, memos dated September 26, 1972, October 1, '72 and October 2, 1972.

I will just read the first one, dated September 21, 1972.

(Mr. Kaufman read from Government's Exhibit 535 in evidence to the jury)

BY MR. KAUFMAN:

Q Was that VIP program successful in selling additional land to HSO's?

A The VIP program you are talking about here was a department setup. The VIP as I knew it was prior to Miss Masone getting the job and that was something completely different and that is why it didn't look familiar to me.

Q I am not sure I understood what you are saying.

THE COURT: He is saying that this document which you just read which I will now exclude occurred after he left ATC.

THE WITNESS: That is not true, sir. That is not what I meant at all.

There were many times that we used the words VIP in our functions and often the approach to the sale was a little different under VIP titles.

The VIP was referring to earlier was run by Leonard Geller. There was no manager to it. There was no manager to it.

t

Q Were you aware --

A It wasn't a team. It was an expression like VIP. What we did we invited people up there on buffet lunch --

MR. FLEMING: Your Honor, we heard what they did.

THE COURT: Yes.

A Right. This came after, this latest exhibit.

Q Can you explain what this VIP program was?

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. FLEMING: I thought he said he wasn't there.

THE COURT: The date was '72 so he had to be there.

Q What was this VIP program?

A I am not sure. I don't recall. I know she became a manager of a team. What the function of her team was, I don't know.

THE COURT: 535 is excluded.

Go on to something else.

Q One further question. Earlier on when you were describing -- when you were recounting the number of teams that ATC had, one of the teams you mentioned was a VIP team. Do you recall that?

A Right.

Q What was that VIP team in reference to?

A It just escapes me. We had so many teams that that particular function just escapes me.

THE COURT: Go on to something else, Mr. Kaufman. The witness has been perfectly clear the document was not related to his testimony at all.

Q Other than the VIP program, what other program, if any, did AMREP have to sell additional land to home site owners?

A We had five dinner teams. I was one of them, my team was one of them.

We had a VIP team, I won't go into because it escapes me.

We had a home site operation where people would go directly to the client's home, they would bypass the restaurant dinners.

We also had a division which sold homes. We had a group of men that sold to property owners homes, trying to get a house binder from them to go down there and to apply for a mortgage in terms of getting a loan.

We also had what was known as a hospitality team. The hospitality team worked each evening within the office. It originated on 61st Street when ATC moved to 1780 or whatever the address is on Broadway, that hospitality also moved along with us. These were invites made by telephone called out of the Manhattan phone book, getting people in at 5:30, 6:00 at night to join this program. Buffet dinner, show the same film, same approach of selling.

Q This hospitality presentation was right --

A It was a non-traveling team. It was right in the home office.

Q It was in the home office?

A Right, of ATC.

Q What address was that?

A There were two. We moved once. Originally when I started with the company we were at 16 West 61st Street where the headquarters is still today.

Then ATC moved to 1700 something Broadway.

Q When ATC was still at 16 West 61st Street, do you recall on what floor the hospitality presentation took place?

A I don't. I know it was a floor or two below us. I think it was the ninth floor and we were on the tenth or the seventh floor, I don't know.

Q I think you also mentioned the USO dinners that usually occurred on Sundays.

A Right.

Q Can you describe those dinners for us?

A Those dinners were very, very successful. There was no mailings to them. Basically it was the land consultants' job to get out a property owner and his referral and the company worked as an overall team, everyone was supposed to be there. We sometimes had as many as 300 or 350 people. They were very, very successful dinners.

Q How did those dinners relate to the regular week night dinners?

A Completely different.

Q In what way?

A There was no presentation. We started to sell right away. We showed the film eventually, but there was no opening introduction whatsoever. We just went right into it.

Q Right into the sale?

A Right into the sale.

Q Were these dinners successful in selling additional alnd to home site owners?

A Extremely so.

Q With respect to those HSO dinners, were the HSO's told anything or shown anything with respect to the increased valuation of the land they had already purchased?

A From time to time.

Q Depending upon the HSO, how would that be done?

A Well, let us say that we invited a HSO that hadn't been to a dinner for a year, which is not likely to happen. Our sales people were pretty much on the ball in the sense of constantly keeping the people up to date.

We would show them what the property on our price list would be worth today against either last year or the time that they originally bought the property. We would use this same approach with their guests. This is the reason that we were so successful in our sales.

THE COURT: Tell me, Mr. Bondy, these Sunday night dinners, which I gather you call the home site --

THE WITNESS: Yes.

THE COURT: -- owners dinners, right?

THE WITNESS: Yes.

THE COURT: How many of those people had gone out to Rio Rancho, do you have any idea?

THE WITNESS: I would say a large percentage of them because the whole concept there, your Honor, was the credibility factor of getting somebody to come back to a dinner with their friends and say, hey, look, I came to a dinner, I reserved property, eventually I went out to see the property and I loved it.

THE COURT: When you say a high percentage, 50, 85, 92?

THE WITNESS: About 80 per cent.

THE COURT: 80 per cent, all right.

Q How many of those people had sold land they had previously purchased?

MR. FLEMING: I object to that.

THE COURT: Sustained.

Q To your knowledge, did any of those people tell any of their referrals that they had sold land they had previously purchased and made money on it?

A They sold land within Rio Rancho Estates?

Q Yes.

A No, sir, because I never heard of anybody that sold their land. I never heard anybody selling land at a loss nevermind at a profit.

MR. KAUFMAN: Your Honor, the government offers 536 and 537 and 544, your Honor.

MR. FLEMING: I object to 537. Mr. Lauer tells me it has to do with Silver Springs.

THE COURT: Can we do 536 first since it is a lower number?

MR. ARKIN: There's no objection on authenticity to 536. Only as to relevance on this particular gentleman's testimony, if your Honor please.

THE COURT: Let me see it.

MR. ARKIN: Here, your Honor.

(Pause.)

MR. KAUFMAN: The government would withdraw 537, your Honor.

MR. ARKIN: We are now up to 544, is that correct

MR. KAUFMAN: Yes.

MR. ARKIN: With respect --

THE COURT: Wait, I have got 536 in front of me.

(Pause.)

THE COURT: The objection is overruled.

XXX (Government Exhibit 536 received in evidence.)

MR. ARKIN: With respect to 544, your Honor, again we have no authenticity objection and I take it that I needn't repeat again the connection objections that we may have had in respect to this as well as other documents.

THE COURT: This is 544?

MR. ARKIN: Yes, your Honor.

THE COURT: Let me see it.

(Pause.)

THE COURT: The objection is overruled.

(Government Exhibit 544 received in evidence.)

MR. KAUFMAN: Your Honor, I will read 544 first since that's its chronological order in relation to 536.

(Mr. Kaufman read from Government Exhibits 544 and 536 in evidence to the jury.)

BY MR. KAUFMAN:

Q Mr. Bondy, which, if any, of the defendants did you see at any Rio Rancho sales dinner?

A The defendants in the room, your mean?

Q Yes.

A Just two.

Q Which two were those?

A Mr. Danny Friedman joined us once at the Playboy Club.

Q Do you see Mr. Dan Friedman in the room?

A Yes.

Q Can you point him out?

A Sitting directly behind you to your left.

MR. KAUFMAN: May the record reflect Mr. Bondy identified Mr. Dan Friedman.

THE COURT: Yes.

MR. KAUFMAN: The government offers 541 --

THE COURT: Wait, he is in the middle of an answer.

MR. KAUFMAN: I know, your Honor, this is right on that point.

THE COURT: He is in the middle of an answer. Let him finish with it.

Q Continue.

A The other gentleman that's in the room that also attended one of our dinners was in the Hotel Biltmore was Mr. Howard Friedman, we had a testimonial for him once on a Saturday evening.

Q Do you see Mr. Howard Friedman here in the room?

MR. ARKIN: We acknowledge Mr. Friedman is Mr. Friedman.

Q When you say a testimonial dinner for Mr. Howard Friedman, was that a sales dinner?

A Yes, it was treated as a sales dinner.

MR. KAUFMAN: The government offers 541.

MR. ARKIN: We have no objection to 541.

THE COURT: All right.

XXX (Government Exhibit 541 received in evidence.)

MR. ARKIN: My friend Fleming wants to make sure he has none.

MR. FLEMING: No objection, your Honor.

MR. KAUFMAN: If I may read it, your Honor.

(Mr. Kaufman read from Government's Exhibit 541 in evidence to the jury.)

A. EM

Q Mr. Bondy, did you ever invest in Rio Rancho land?

A No, sir.

Q Did you ever make an attempt to?

A One time.

Q What happened?

A I got caught in it thus when I shortly became a manager and it was compaly policy at that time that any employee of the company that wanted to purchase land would be given a 15 per cent discount, and I went over to Lenny Geller and I told him I would like to buy a little half acre, and he strongly discouraged me.

Q What did he say?

A I'd have to use a little vulgarity in the court.

MR. FLEMING: I object to that, your Honor. I move to strike that entire answer.

THE COURT: Yes. Sustained.

Q Who is Lenny Geller, Mr. Bondy?

A Lenny Geller was the direct assistant to Peter Miller. They worked together.

Q Did they run ATC Realty?

A Yes.

MR. FLEMING: I object to that.

THE COURT: Sustained.

MR. KAUFMAN: Your Honor, may we approach the side bar?

THE COURT: No. I am not allowing the answer in.

Q Did you buy Rio Rancho land?

A No, sir.

MR. KAUFMAN: No further questions.

XX CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Bondy, I am Stanley Arkin. I am one of the defense attorneys.

You and I have never met before, I take it?

A No, sir.

Q You say you went to college for four years?

A Yes, sir.

Q And you spent several years in the real estate industry?

A Yes, sir.

Q And you are a licensed salesman in New York State?

A Yes, sir.

Q Also in Connecticut?

A Yes, sir.

Q Before you came to work for AMREP, you had your New York State salesman's license, did you not?

A Yes, sir.

Q In order to work over at ATC, you had to do something to get it transferred from where you worked previously to ATC, is that correct?

A Right.

Q In order to comply with the appropriate regulations?

A I had an intact license. It means it didn't expire.

I don't know what the laws were then, but in those days the formality was you filled out a form, you paid $1 and you let the State of New York know that you are working for broker B rather than broker A. It was a simple transfer.

Q Was that required by ATC?

A That was not only required by ATC, it was required by law.

Q Yes, sir.

Did you have to go through any procedures in order to become licensed as a salesman?

A Yes, sir.

Q What did you do?

A I had to study a book and take an hour test, which consisted of 40 questions.

Q What was the book?

A The book was A Real Estate Salesman of the State of New York.

Q And before that, by the way, you had been in the real estate business for some three years, that is, before you came to ATC?

A Right. I sold land in the Poconos.

Q I take it that referring to yourself as a land consultant wasn't very embarrassing, was it?

A In terms of land consultant? Yes, yes. I am getting to what you are getting to, sir. Yes, yes. Land consultant, yes.

Q You had no problem referring to yourself as a land consultant?

A No, any more than I had a problem to refer to myself as Steve Bondy.

Q Which is your name?

A Right.

Q What is your present occupation?

A I am a salesman for a firm that markets seminars for corporations as well as state and federal agencies.

Q And you call yourself a salesman there?

A No, sir.

Q What do you call yourself?

A I call myself a program consultant.

Q Which you are, I take it?

A That's the name that they gave me.

Q And you have no trouble using that name, either, do you?

A Program consultant?

Q Yes.

A No.

THE COURT: The question was, are you a program consultant?

MR. ARKIN: Yes.

A Am I a program consultant?

Q Yes.

A Yes, I'm a program consultant.

Q With respect to the confidential survey --

MR. ARKIN: May I have that, by the way? What exhibit is that?

Mr. Kaufman, do you have that?

MR. KAUFMAN: 256.

Q That is Exhibit 256.

You testified that that was used for qualifying the prospect?

A No, I didn't say that it was used to qualify the prospect, it was used by our consultants to get a little feedback, to get a little background information about the particular individuals that they were sitting with that particular evening.

Q So you would be able to qualify them as a prospect, would that be the purpose?

A Yes.

Q Is qualifying a prospect a phrase which you are familiar with in sales parlance?

A Yes.

Q What does it mean?

A Qualifying? To determine what you can sell a person, to get a little background about him. Often an occupation will tell you approximately how much salary the person has.

I think if you refer to the very questions that are in that survey, you will see that these are leading questions which are used as a tool to help the salesman establish some credibility with the client.

Q Let me ask another leading question, then.

Mr. Bondy, I take it that this kind of thing, qualifying a prospect, is used by a salesman in any industry, isn't it?

A Absolutely.

Q Nothing sinister about it?

A No, sir.

Q I show you Exhibit 256, and ask if you will look at the lower right-hand corner of it (indicating).

A Yes, sir.

Q What designation do you see there, sir?

A Well, I see it says NYAA22 and it is either 11 or 71.

Q Do you know what NYA means, that designation?

A Well, to the best of my recollection, that means that thathas been recorded with the Department of State, that it is a matter of record with the Real Estate Commission which controls --

Q WVth the New York Department of State?

A Yes.

Q To your knowledge, was this survey, or any other document, ever used previous to offering the NYA number?

A Yes, sir.

Q Excuse me. Was it ever used or given to a customer without an NYA number?

A Yes, sir.

Q It was?

A Yes, sir.

Q What about other documents?

A The only one that comes to my mind, and it was just something that was a slap on a wrist, when you showed me the confidential survey, that Xerox copy at the same time that you showed me this one, if you would look at it, Mr. Arkin, I doubt very much that it carries an NYA number.

ATC Realty was not aware of this, therefore, we went into print and we made these up that carried the NYA number.

Q Which was submitted to the New York Department of State before use?

A I don't believe the first one was, that's why it doesn't have an NYA number.

Q This one does, 256?

A This one does.

Q Yes.

And I take it that it was company policy that brochures, offering statements and other documents which were used by the company at dinners had NYA numbers, isn't that right?

A Yes, sir.

Q And that was compelled by the company?

A Right, sir.

Q Part of your responsibility as manager was to see that that was carried out that way?

A Well, usually by the time I got it, Mr. Arkin, the thing was approved by corporate officers and it was approved by the Department of State, so I did not need my seal of approval.

Q But nonetheless, if you did see something that was unauthorized, it was part of your job to see to it that it wasn't used, isn't that so?

A Correct.

Q By the way, this confidential survey, I think you testified,was not used by every salesman, it was discretionary, wasn't it?

A That's right.

Q You used the term "closing, closing speech and closing," during your direct testimony.

Will you tell the jury and me, too, if you will, what "closing" means.

A The word "closing" means that you laid out the picture and you are now going to ask for the money by telling them what it entails in terms of cost, how they can go about buying it, that we, as a company, make it convenient for them in monthly terms.

Q Is the phrase "closing" used by salesmen in other industries?

A In every industry.

MR. KAUFMAN: Objection, your Donor.

THE COURT: You mean in the industry in which he sold, like a lingerie business?

MR. ARKIN: I mean an industry --

THE COURT: Pocono Farms?

MR. ARKIN: Yes.

A In every business, Mr. Arkin.

Q Have you ever heard of the phrase "assumptive closing"?

A Assumptive?

Q Assumptive closing.

A Yes.

Q What does assumptive close mean?

A Assumptive close means, to me, to be assumptive, to assume the sale.

Q Is there any particular practice which takes place when you have what is called an assumptive close? Let's take this particular industry, the land industry, any particular practice which takes place in order to constitute an assumptive close?

A I think -- I hear you, sir. I'm not sure if I am going to give you the --

Q Let me ask you this:

Would an assumptive close be where somebody starts writing out the contract before the prospect actually and finally decides upon purchasing the product? Is that correct?

A Yes.

Q That is an assumptive close?

A Yes, sir.

Q And an assumptive close is also used in other industries in which you have --

A Absolutely.

Q Right.

And with respect to holds, you testified about that.

Do you recollect that whenever a hold was called at a dinner party, it was also customary practice for the salesmen to tell the people at his table that the reason for that was that he and the potential customer could then discuss that parcel of land without anybody else discussing it at the same time?

A I'd have to answer that in two things:

I can't give you a yes or no on the way you presented the question to me. The answer is yes and no.

Yes, often a salesman will put down, when he handed the potential customer the allocation sheet, "I'm going to discuss this particular parcel of land with you."

But the ultimate goal of that allocation sheet and to call a hold was very deliberate and it was to create excitement --

Q Answer my question.

Was a customer told --

MR. KAUFMAN: Your Honor, I object. He answered the question.

MR. ARKIN: No, he didn't.

Q Was a customer told, following the call of a hold, that, "The hold is called so that you and I might discuss this parcel without anybody else discussing it at the same time."?

A No, sir.

Q That is, it was never done?

A Not to my knowledge, because I didn't know what hold was going to be called by any individual.

The only thing that I made --

Q Once a hold --

THE COURT: Wait, wait.

You were asked a question. Just limit your answer to the question being asked.

Q Was it your understanding when a customer was sitting at a table with a salesman and a hold was called, or had been called, the salesman then customarily told the customer the hold has been called, I called it or he called it so that the same piece of land cannot be discussed by two salesmen at one time?

A Not to my knowledge, sir.

Q Are you familiar with the up system?

A Yes, sir.

Q What is an up system?

A An up system is a rotation system where everybody gets a fair amount of ups, amount of people to talk to. It's a rotation system.

Q Is that a kind of a system used in other sales situations?

A Absolutely.

Q Nothing distinct with this particular industry, is that correct?

A Right, sir.

Q If you shake your head and you don't speak, it is not recorded.

A The answer is yes, it is used by other industries.

Q In respect to the prospective price increases which were occasionally used where prospective customers were occasionally informed of prospective price increases, to your knowledge, did those price increases of which they were informed always come to be?

A That's right.

Q Nothing untrue about that?

A No, sir.

(Continued on next page.)

Q You say you received certain training before you were allowed to sell land, is that correct?

A Yes.

Q What did the training consist of?

A The training consisted of having a general geographical awareness of the overall property of Rio Rancho Estates, prices.

There were a certain amount of mechanics that were involved, for example, like transfer, upgrade, how you worked it, where you took back an old piece of property, give a customer property appreciation and upgrade it by selling them another piece of property, to talk -- you would be asked questions by clients at the dinner, "Well, how far am I from Las Vegas".

Q So you were given product knowledge?

A Product knowledge.

Q Product knowledge was part of it.

Were you also instructed during these training sessions the necessity of using only approved or authorized literature?

A That's right.

Q About the necessity of telling it like it is, making know misrepresentations?

A That's right.

Q That was required by the company, wasn't it?

A Right.

Q And every salesman was told that?

A Right.

Q And you, as a manager, were told that?

A Right.

Q Indeed, when you came to work for the company, do you recall having signed a contract, a written contract? Do you recall that?

A I probably did.

Q Do you recall having signed one as a manager?

A I probably -- I'm sure I did. I'm sure I signed a contract on both, yes.

Q We will come back to that when we find it.

Do you know what happened to a salesman if he misrepresented the product and that came to be known by people in authority?

A We usually fired him.

Q If they misrepresented?

A That's right.

MR. ARKIN: Please mark this as Defendant Howard Friedman and Henry Hoffman Exhibit AB, please.

(Defendant Howard Friedman and Henry Hoffman Exhibit AB marked for identification)

xxx

Q Are you able to identify Exhibit AB(handing)?

A It's my signature.

Q Do you remember having signed this particular document?

A Right.

Q Do you recall that as part of your contractual obligation with the company, meaning ATC, that you were obliged to follow all of the appropriate state rules and regulations in respect to the sale of property?

A Yes, sir.

Q And that you were obliged not to misrepresent the product you were selling?

A That's right, sir.

Q And that was made a part of your written agreement with the company?

A It was made a part of the written even with the salesman, not just the sales manager.

Q With everybody?

A With everyone, right. It was a matter of policy, if I may get to the nitty-gritty of your question. It was policy.

Q Company policy?

A Company policy.

Q You have been to Rio Rancho several times, haven't you?

A Yes, sir.

Q You said four times?

A Yes, sir.

Q Four times over a space of two years?

THE COURT: Wait.

Are you going to offer AB?

MR. ARKIN: No, I am not, your Honor. I just inquired to refresh his recollection, but that was not required.

A I was there four times within the period two, two and a half years, yes, sir.

Q And during the course of that two or two and a half years, did you observe any growth of Rio Rancho?

A Absolutely.

Q Do you remember from the first time you were there to the last time you were there what constituted that growth?

A Yes, sir.

Do you want me to describe it for you?

Q Yes, if you would, Mr. Bondy.

A Okay.

The first time I went out there I went out there as a salesman. The next time I went out there was about two years later. As a matter of fact, Mr. Peter Miller insisted that I go only to see the growth, because I said, "I don't want to see it, I'm too busy selling back here in the East. It costs me money to make a trip out there."

It was nothing in it for me to waste five days of my time making the trip, in spite of the fact that the company paid all my expenses.

I saw tremendous growth. I saw the shopping center go up, I saw the country club being completed, the many homes that were built in and around the country club and in other area. This is all true.

Q And wasn't the principal inductment which you used to sell the property this very growth which you observed?

A That's right.

Q And the very growth which had been going on since the first day Rio Rancho was conceived?

A Yes.

Q And you testified on your direct examination that a principal inducement was the building of a community in the sunshine where there was growth, isn't that right?

A That's right.

Q Do you believe that Rio Rancho was building a community in the sunshine where there was growth?

A I would like to answer that my way.

The answer is yes.

THE COURT: Wait.

He is entitled to an answer the way he wants it.

THE WITNESS: Okay.

A The answer is yes.

Q Thank you.

You saw these two films here this morning, the West Side Story and the other one was called "Your Golden Future".

Do you recall seeing those?

A Yes, many times.

Q And you probably saw them many times when you were a salesman, didn't you?

A Yes.

Q You nod your head and the machine can't hear it. Please say yes or no.

A Yes, sir, many times.

Q And as you saw those two pictures, let's take the West Side Story first, based on your visits to Albuquerque and to Rio Rancho and what you know of that area, did the West Side Story accurately depict what was there?

MR. KAUFMAN: Referring to where, your Honor? There were many different locations.

Q Did the picture actually depict or fairly depict what was at Rio Rancho and in the Albuquerque area?

A What you saw in the film is a matter of fact, yes. I mean, I've seen it.

Q So the film was a true film?

A As it was presented, yes.

Q And what about Your Golden Future, the same thing, isn't that so?

A As it was presented, yes.

Q And you saw with your own eyes the houses, the roads, the people, buildings and so forth which were depicted in those pictures, didn't you?

A Yes, sir.

Q By the way, when you testified earlier, you indicated that you had made a presentation to the potential customers with respect to the fact that Albuquerque was surrounded on three sides by mountains, do you recall that?

A Yes, sir.

Q Didn't you mean to say surrounded by mountains and government and other land?

A Yes, sir, I meant government lands, sir, yes.

Q Is that correct, sir?

A Right.

Q There are mountains on one side?

A And federal reserve lands on the other, right.

Q Was it not part of the company policy to encourage people to actually go out there and see the land which they purchased?

A Very much so.

Q And the tours which the company sponsored, I take it, were at a cost, if you know, less than if the individual had gone out there himself, isn't that so?

A Right.

Q It was a bargain?

A Yes, sir.

MR. ARKIN: Mark this as AC.

xx (Defendant Howard Friedman and Henry Hoffman Exhibit AC was marked for identification)

Q Mr. Bondy, are you able to identify AC for identification? (Handing)

A Yes. This is what we were talking about before. This is -- yes. This is an itinerary of a particular tour. This tour took place in October of 1972.

As I testified earlier, we had a complete breakdown, not only for ourselves but as to the clients as to what we were going to do with them during their stay.

Q And this was similar, I take it, as the itineraries of the other tours which you attended, is that correct?

A Right.

MR. ARKIN: We offer AC.

MR. KAUFMAN: Just one or two questions, your Honor.

VOIR DIRE EXAMINATION

BY MR. KAUFMAN:

Q This appears to be a schedule of events of the Washington tour.

Are you familiar with the schedule for the Washington tour?

A No, but they are very much similar. Basically, it gives you a time and location breakdown of the trip, three days or four days. It is an itinerary of the tours.

Q Regardless where the tours went to?

A Regardless. I don't care whether they went to Pittsburg.

MR. KAUFMAN: No objection.

(Defendant Howard Friedman and Henry Hoffman Exhibit AC was received in evidence)

CONTINUED CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Bondy, you observe that the date Thursday, October 26, 1972, for the hours 5:30 to 7:30 they had "At Leisure".

Do you see that?

A Right.

Q And similarly for the hours of 4:00 to 6:00 on the following day at leisure, is that correct?

A Right.

Q And on Saturday, 5:30 to 7:30, at leisure; is that correct?

A Yes.

Q So it was a practice on any of the company tours, was it not, to cut out a certain portion of the day when the individuals who were at Rio Rancho or Albuquerque could do whatever they wanted?

A That's right.

THE COURT: What happened if somebody didn't want to go to a barn dance?

THE WITNESS: They just stayed home.

THE COURT: I should tell the jury one of the places they have scheduled is a barn dance.

MR. ARKIN: Yes, that's correct, your Honor.

THE COURT: Supposing they didn't want to go to a barn dance and have dinner there, did they have to go?

THE WITNESS: No. They could stay at the hotel and have dinner there or go anywhere else.

THE COURT: Did you make any effort to force them to go to the barn dance?

THE WITNESS: Well, we usually tried to keep our flock together, your Honor, but if they insisted by not going -- there were many people, for example, that were afraid to take a tram ride. We went to the restaurant on top of the mountains, which is several thousand feet up. There were people that were afraid to get on that tram ride, so we fed them down in the valley. That's what we did.

THE COURT: But my point is, they didn't have to go up to this barn dance at night?

THE WITNESS: No, they did not. We didn't use any shotgun tactics along those lines, sir.

Q I take it that each of the customers was given a copy of this particular document.

A Excuse me?

Q Each of the customers on the tours --

A Absolutely.

Q So they knew what was planned for them?

A Right.

Q If they wanted to make other arrangements, they could do that?

A Yes.

Q When you just a few moments ago testified on direct examination about the concept of control on these tours out to the property, you were talking about a scheduling, weren't you?

A Yes, sir.

Q You weren't talking about any kind of psychologically coercive brain control, were you?

A There was a certain amount of brain control in terms of during the day on these scheduled tours.

Usually you would find one or two couples that would want to drift off for one reason or another. You had different ages of people.

We had people that were in there seventies, came five o'clock at night they didn't want to go anywhere, sir, they were simply tired.

Q They retired to their rooms?

A Right. They had dinner at the hotel they were staying in --

Q They watched television?

A Right.

Q Or they used the telephone to call somebody or whatever they wanted to do?

A Whatever.

Q You also testified that it was company policy not to tell anybody that there was a resale market, isn't that right? You testified that you were instructed by your superior, Peter Miller, to say there was no resale market, is that correct?

A That's right.

Q When you had these special HSO dinners, do you recall testifying about those?

A Excuse me.

Q The HSO dinners.

A Yes.

Q You invited people to those that had already purchased property?

A That's correct.

Q They had been out to Rio Rancho generally?

A In most cases, yes.

Q About eighty percent you said?

A Yes.

Q They had actually seen what it was they purchased, is that correct?

A Right.

Q You said these dinners were extremely successful in selling land, is that so?

A Yes, sir.

Q Because the people you had invited had purchased land already and had seen exactly what it was that they had purchased and were happy about it?

A Right, sir.

Q They were a good advertisement, is that right?

A Right.

Q You didn't twist their arms to say particular things, did you?

A Never.

Q Did you ever give anybody any money at these dinners?

A Maybe once in a while an extra fruit cup, but never any cash.

Q You didn't consider the fruit cups any kind of a bribe, did you?

A No, sir.

Q You would have given them a fruit cup even if they had not been friendly, I take it?

A Yes, they could have had mine any time they wanted to take it.

THE COURT: We will have to suspend until tomorrow morning at 10:00 o'clock. I have another hearing scheduled at 4:30.

Tomorrow morning we will change courtrooms to Room 318 and I suggest that the jurors come into 318 and report to Mr. Fresco and he will show you where the jury assembly room is for that courtroom.

Secondly I would admonish the jury not to use any of the areas in the court that are generally used by the attorneys or the defendants or the general public unless it is absolutely necessary and try and confine yourselves to the area set aside for the jury.

We will see you at 10:00 o'clock tomorrow morning in Room 318.

(Adjourned to Tuesday, November 16, 1976 at 10:00 o'clock a.m. in Room 318)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Peter Zaknich (Resumed)			1195	
Otto Steve Bondy	1218	1333		

EXHIBIT INDEX

Government	Identification	In Evidence
256		1248
535		1321
536		1329
544		1330
541		1331

Defendant Howard Friedman and Henry Hoffman	Identification	In Evidence
AB	1347	
AC	1353	1355

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gtjb

UNITED STATES OF AMERICA

V.

76 Cr. 644

AMREP CORPORATION, et al.

November 16, 1976
10:00 a.m.

oOo

(In the robing room; counsel present.)

THE COURT: Who wants to talk?

MR. KAUFMAN: I think the government does at least, your Honor.

THE COURT: Go ahead.

MR. KAUFMAN: The first thing, your Honor, with respect to the offered testimony yesterday of Mr. Bondy when he was going to testify that at one time he was thinking of buying a half acre of land and he went to Mr. Geller, who was the general manager of ATC, and he was about to relate that conversation and there was an objection and your Honor sustained the objection, I don't think the grounds for sustaining the objection were ever stated.

Mr. Fleming's objection was that Mr. Geller was not an officer of ATC and, therefore, could not be admissible against ATC.

If that is the grounds for sustaining the objection, we would like to argue that very briefly, your Honor, because the rules of evidence are quite clear that in order for a statement to be admissible against a corporate defendant, the person who makes the statement does not have to be a corporate officer under 801(d)(2)(D). It is sufficient to be an employee, agent or servant, and we would renew our application for that testimony.

MR. SPRIZZO: You would have to have authority to make that statement, Judge, as I understand the law.

MR. KAUFMAN: No, it does not. It has to be a statement within his employment.

MR. SPRIZZO: It has to be within his scope of his agency and Geller's opinion was not within the scope of his agency.

THE COURT: I adhere to my ruling.

Anything else?

MR. KAUFMAN: One other matter, your Honor.

Now that we are in courtroom 318, there is more room in the well of the courtroom. I notice that Mr. Oberman and Mr. Blum are still planning on sitting in the spectators' section with their family.

The government would, again, apply that the defendants sit in the well of the courtroom.

THE COURT: The defendants can sit any place they want. There is no rule the defendant must sit in a certain place.

MR. KAUFMAN: But I think the jury should not be in a position of seeing a defendant association living with his family during a trial, your Honor, for the same reason that a defendant --

THE COURT: What do you mean association living? I see two men sitting there. I don't know anybody else who is sitting near them.

MR. KAUFMAN: They are sitting with their wives.

THE COURT: If they sit with their wives they sit with their wives. There is no rule that a defendant must sit next to his counsel or at counsel table or right behind his counsel.

He can sit any place he wants, as long as he is in the courtroom, and I will not direct him to sit there. If he wants to sit back there, he may.

MR. HOFFINGER: So that the record is clear, my client's wife is not in the courtroom. My client, Mr. Blum, is alone in the courtroom, other than -- he may be sitting next to Mr. Oberman, but his wife is not in the courtroom, nor is any woman or any friend of his, that I know of, in the courtroom with him.

I just want the record to be clear.

MR. RUBINO: Your Honor, may I state with respect to Oberman that it is most convenient for all concerned, including thecourt, that he sits where he is.

He suffers from esophageal spasm and, as your Honor noticed, he leaves the courtroom to get water which he needs. In addition to which he is 76 years of age and he goes to the bathroom. If nothing else, it would be extremely inconvenient and disconcerting to see him leave as often as he does except as where he is.

THE COURT: I see no reason to direct him to sit in the well.

MR. KAUFMAN: Lastly, your Honor, we have the copies of Exhibit 314, the script used by Mr. Bondy.

We would like to submit that to the jury for their reading of it as soon as practicably possible.

THE COURT: Give it to Mr. Frezzo and he will distribute it to them and call a morning recess and I will tell them to read it.

(In open court; jury present.)

THE COURT: I think we have a little more room in this courtroom than we had upstairs.

XXX

OTTO STEVE BONDY, resumed.

THE COURT: You may proceed.

MR. ARKIN: If your Honor please, we have no further cross examination of Mr. Bondy.

THE COURT: Mr. Fleming?

MR. FLEMING: I have none, your Honor.

THE COURT: Any redirect?

MR. KAUFMAN: Very short, your Honor.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. KAUFMAN:

Q Mr. Bondy, do you recall being examined on cross examination yesterday as to whether or not the promotional material and the films had an NYA number on them?

A In the film?

Q Yes.

THE COURT: No, he was not asked about NYA on film, he was asked about NYA on Exhibit 256.

Q Do you recall being asked about the NYA number on Exhibit 256, which is the confidential --

A Yes, sir.

Q I believe you testified that all the promotional material had to have an NYA number, is that correct?

A By law they should be. To the best of my knowledge, all of them did.

Q Did the scripts that you read from have an NYA number of them?

A You mean the manager's presentation, such as it is?

Q Yes.

A It does not have an NYA number, but it is a matter of public record. That I do know.

Q How do you know it is a matter of public record?

A For the simple reason that from time to time at these various dinner receptions, we had inspectors from the Department of State at the various dinners, and I'm quite sure I could not say what I did say unless they had a copy of it.

Despite the fact it does not carry an NYA number, it is a matter of file. I believe there is an NYA number attached.

Q Do you know from your own knowledge whether those scripts are filed with the New York Secretary of State's office?

A To the best of my knowledge, yes.

Q And the basis of that knowledge is the fact that there were inspectors at dinners?

A From time to time, yes.

Q And other than that, you have no other way of knowing whether or not the scripts are filed with the New York Secretary of State?

MR. ARKIN: Objection, your HOnor. This is cross examination.

THE COURT: Overruled.

Q Is that right?

A Sure.

Q I believe on cross examination yesterday Mr. Arkin asked you if one of the principal inducements to get people to buy Rio Rancho land was the development that was going on there and the fact that the community was being built in the sunny southwest, and I believe you said that you couldn't answer that question yes or no, you wanted to elaborate on it and you were not able to.

Can you elaborate on that answer at this point?

MR. FLEMING: I object, your Honor.

THE COURT: Sustained.

Q Mr. Bondy, do you recall being asked on cross examination about the principal inducement or one of the principal inducements in getting people to buy Rio Rancho land?

A Yes.

MR. FLEMING: Objection, your Honor, as to form.

THE COURT: Repeat the question.

(Record read)

THE COURT: Overruled.

Q Do you recall your testimony on cross

examination?

A Yes, I remember the question.

Q And did you state that one of the principal inducements was that a community was being developed in the sunny southwest?

A Yes, that was my answer.

Q And did you indicate a desire to more fully explain that answer?

A Did I have a desire to go further with it, you mean?

Q Yes.

A Well, I can, if you want me to.

Q Yes.

MR. FLEMING: What was the question?

I object, your Honor.

THE COURT: Sustained.

Q At the time that you were asked that question, Mr. Bondy, do you recall saying that that was not a question that you could answer yes or no?

A Yes, sir.

Q Could you now give us the full explanation that you wanted to give?

MR. FLEMING: The witness' answer was yes.

THE COURT: He then changed it and then

gave a "Yes".

MR. FLEMING: Objection.

Q Mr. Bondy, let me read from your cross examination of yesterday at page 1350, starting on line 21:

"Q And you testified on your direct examination that a principal inducement was the building of a community and the sunshine where there was growth, isn't that right?

"A Yes. That's right.

Question on page 1351:

"Q Do you believe that Rio Rancho was building a community in the sunshine where there was growth?

"A I would like to answer that my way.

"The answer is yes."

When you said you would like to answer it your way, did you want to say something other than yes?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Was there anything in addition that you wanted to add to that answer, Mr. Bondy?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Do you recall Mr. Arkin questioning you about the tours to Albuquerque and whether or not the people had a right to do what they wanted and if they didn't want to go to the dinner that the company scheduled that they didn't have to.

A Yes, I do recall that, sir.

Q You said if they wanted to stay in their hotel and wanted to have dinner there they could; is that correct?

A Yes.

Q If the homesite owner did not go with the tour to the restaurant where dinner was scheduled and wanted to stay at the hotel and have dinner, did the homesite owner then have to pay for his own dinner?

A No, no. We would make arrangements to feed him at the particular establishment. There usually was a restaurant at the hotel.

Every hotel that was on the tour had its own restaurant.

end 1b

Q Do you recall testifying today about the films that were played, West Side Story and Your Golden Future?

A I recall the films being shown, yes.

(Pause)

Q On page 1352, starting on line 6, the question was asked:

"Q Did the picture" referring to West Side Story, "actually depict or fairly depict what was at Rio Rancho and in the Albuquerque area?

"A What you saw in the film as a matter of fact, yes, I mean I have seen it.

"Q So the film was a true film?

"A As it was presented, yes.

"Q And what about Your Golden Future, the same thing, isn't that so?

"A As it was presented, yes."

When you said "As it was presented", what were you referring to?

MR. FLEMING: Objection.

THE COURT: Overruled.

A The film as it was shown, what we had seen in the film was the development areas and it did not show the undeveloped areas. That is what I meant by that.

MR. KAUFMAN: No further redirect, your Honor.

MR. FLEMING: May I ask just one question, your Honor?

THE COURT: One.

RECROSS EXAMINATION

XXX

BY MR. FLEMING:

Q Is it your testimony that the film that was shown yesterday does not show any of the undeveloped areas of Rio Rancho?

A That is not what I meant at all, sir.

THE COURT: That is what you said.

THE WITNESS: I said it shows predominantly the development areas. It does not dwell on the undeveloped areas.

THE COURT: The jury saw the film. You may step down.

(Witness excused)

MR. KAUFMAN: Your Honor, at this time the government would like to play Tape 669-B.

This is a copy that both sides have stipulated to being a true copy to Government's Exhibit 669-A.

MR. DEVORKIN: Your Honor, I think the jury will need some help with the earphones.

MR. KAUFMAN: Some of your earphones have not been plugged in.

(Pause)

MR. KAUFMAN: If you cannot hear it in both ears, let us know.

THE COURT: What is this transcript I have been handed?

MR. KAUFMAN: This is the transcript of the tape, your Honor.

THE COURT: It does not indicate it. Does the one in evidence indicate what it is?

MR. KAUFMAN: The transcript is marked 669, your Honor.

THE COURT: Any objection to 669 which is the transcript that has just been offered?

MR. FLEMING: My understanding is 669 has been received so I have no objection to the transcript.

THE COURT: 669-A was received but not 669.

MR. FLEMING: I have an objection to any transcript as to which there is no underlying recording.

THE COURT: No what?

MR. FLEMING: Is this the transcript of a recording?

MS. HYNES: The transcript of this tape.

MR. FLEMING: The tape that is in evidence?

MS. HYNES: Yes.

THE COURT: It has been offered.

MR. FLEMING: I have no objection.

MR. GLENDON: Your HOnor, can we fix the date?

MR. ARKIN: Just as an aid to the jury we have no objection to the transcript being used, but the transcript is not being offered in evidence.

THE COURT: It is being offered in evidence because they are looking at it. Give them the usual cautionary instruction after we clear this up.

It has now been offered. I am asking if there is any objection.

MR. ARKIN: To its use by the jury, none, your Honor.

THE COURT: Any objection to the words in it? Did you stipulate with counsel that they could use it after listening to the tape?

MR. ARKIN: We stipulated, your Honor, that it was an accurate transcript.

THE COURT: Fine.

Mr. Glendon, you have a point.

MR. GLENDON: I just wanted to see if we could fix the date.

THE COURT: What is the date?

MR. KAUFMAN: The date, your Honor, is October 1, 1968. That appears on the cassette of the original tape, which has been marked 669-A.

MR. FLEMING: Is the place there too? It is in the transcript, okay?

THE COURT: Ladies and gentlemen of the jury, you have been furnished a transcript of this tape which you are going to listen to. This is given to you as an aid. It is your hearing of the words that counts not what is written on here. So if you disagree, after hearing the tape, as to whether it is correctly reflected in this transcript, you rely on what you felt you heard and not on what the transcript says.

(Government's Exhibit 669 received in evidence)

MR. KAUFMAN: If you can just remove the headsets for a moment. Again, if anyone has difficulty in hearing, please raise your hand or indicate to us so we can make the necessary adjustments. If it is too loud or if you cannot hear, let us know.

MR. FLEMING: Mr. Kaufman and your Honor, I am looking at the front page of this and it does not look like a sales dinner. Is it a sales dinner?

THE COURT: Don't ask me. You have stipulated with counsel that this is a correct transcript of this tape, which I gather came in as a sales dinner.

MR. KAUFMAN: Your Honor, this came in as a sales meeting that Mr. Zaknich and Mr. Mandel testified about.

THE COURT: A sales meeting?

MR. KAUFMAN: The training session that Mr. Hollander conducted of sales personnel.

THE COURT: You did not object to 669-A when it was offered.

MR. FLEMING: I think we did, but I am not raising that objection again. Our record is made on that with regard to identification. I just wanted to be clear and I think the jury should be clear that this is not a dinner presentation. I thought we were hearing a dinner presentation and in fact it is not. That is all.

THE COURT: Tell the jury, Mr. Kaufman, what you are playing for them.

MR. KAUFMAN: Yes, your Honor.

This is a tape -- remove your headsets -- this is a tape of a sales meeting, the training session conducted by Sidney Hollander of sales personnel.

end t

(Tape played)

AM

THE COURT: We will have a recess.

MR. KAUFMAN: Your Honor, may we --

THE COURT: Wait. Yes.

Do you have the 18 copies?

Give them to Mr. Frezzo.

You recall yesterday we had Exhibit 314 which I said would be distributed to you to read during the recess.

Mr. Frezzo, the clerk, will now distribute this to you. You may read them during this long recess.

(Recess.)

(In the robing room; counsel present.)

THE COURT: Who has the request now?

MR. FLEMING: I have a hearsay request, your Honor.

My understanding is that a reporter has been given access to the transcript of that tape.

The transcript itself is not in evidence, so far as I know. I see no reason why a reporter should have the transcript.

The second thing that concerns me in terms of a fair trial is that this is a protracted trial and the jury is not sequestered, and if the tape is reported in excerpted form, which necessarily it would be, and friends or neighbors form opinions with regard to what they read, there is the possibility of jury pollution.

THE COURT: That is the risk you always run in a trial, even if the reporter is sitting there. He reports what he wishes to report and you run into this problem.

Did somebody turn the tape over to the reporter?

MR. DEVORKIN: No. The reporter -- there were speakers, headsets in the back for the press or the public, there were three of them. I think the defendants, a couple of the defendants used those instead of ones that were for them. Maybe it wasn't enough.

After a reporter sat there, he asked us for a copy of the transcript of what had been played, and your Honor had let it in with an instruction to the jury and it had been played for the court, so I assumed that the public could --

THE COURT: Never do that again.

The evidence was the tape, not the transcript, and specifically when I tell the jury it is their version of what they hear that counts, not the transcript, you never should have done that, Mr. Devorkin. But it is done now.

MR. LAVINSKY: Your Honor, is there a possibility gtjb

of getting it back?

MR. FLEMING: I have to make an application for a mis-trial based on the possibility of jury pollution, if your Honor please.

THE COURT: Denied. Denied.

MR. FLEMING: I would like to reserve the right to make the same application depending upon what publicity may result.

THE COURT: All right.

MR. FLEMING: Because I think there is a substantial danger of jury pollution.

THE COURT: I will tell the jury, again, to be careful, as I have cautioned them before, not to read anything.

Mr. Devorkin, never do that.

MR. DEVORKIN: I won't, your Honor. I will get the transcript back from the reporter and tell him the transcript wasn't admitted in evidence.

MR. ARKIN: I would not like to make an issue of that transcript with a reporter, because when you make an issue with a reporter it usually --

MR. HOFFINGER: We should get it back.

MR. DEVORKIN: I will say I made a mistake, it was not admitted in evidence and get it back.

MR. ARKIN: Ask for it back and don't give an explanation.

THE COURT: Yes, the way we took it back from the jury.

MR. ARKIN: Exactly. Don't give him any speech.

MR. FLEMING: Thank you, your Honor.

THE COURT: Incidentally, are there transcripts of the two films that were shown yesterday?

MS. HYNES: There are, your Honor. We have an outstanding request from the defense counsel that they are going to get back to us whether the scripts that we had they would agree with the scripts as shown on the film. They have not reported that back.

THE COURT: I would like to have those.

MS. HYNES: When they report back --

MR. ARKIN: Just one minor thing since we are all here.

My client, Howard Friedman, has to leave on Friday at around 3:00 to take a business trip.

I take it there is no objection to him leaving.

THE COURT: I want him to put it on the record.

MR. ARKIN: Yes, he will, your Honor. But I wanted him to be able to make his reservations on the plane.

THE COURT: Yes, he may.

MS. HYNES: Is it just for Friday or --

MR. ARKIN: No, he will be back Monday morning bright and early.

THE COURT: He will be leaving an hour early.

MR. RUBINO: Since we are making these applications, I would like to leave at a quarter of four on Friday --

THE COURT: I thought that was on the record already.

MR. RUBINO: Not yet, your Honor. You gave me permission to make arrangements with Judge Bramwell, but I did not put it on the record.

MR. FLEMING: I have to appear before Judge Owen at 4:30 on Thursday, your Honor.

(In open court; jury present.)

MR. DEVORKIN: The government calls Allen Seder.

(Continued on next page.)

4A am

ALLEN SEDER, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Seder, where do you live?

A Canarsie, Brooklyn, New York.

Q How old are you?

A Fifty-three.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q What are their ages?

A Twenty-six, twenty-two, seventeen.

Q What is your educational background?

A Equal unto high school.

Q Are you working now?

A No.

Q When did you stop working?

A 1972.

Q What kind of work did you do then?

A Construction.

Q What kind of construction work?

A Glazing.

Q You were a glazer?

A Yes, sir.

Q That is someone who puts in windows on buildings.

A Yes, sir.

Q Were you a member of any union?

A Local 1087.

Q How much money did you earn then?

A Between twelve to $14,000 a year.

Q What caused you to stop working?

MR. FLEMING: Objection.

A I had an accident.

THE COURT: Objection sustained.

Q What are your sources of income today?

MR. FLEMING: Objection.

THE COURT: Sustained.

A Social Security.

MR. DEVORKIN: You cannot answer a question when an objection has been sustained.

THE COURT: Mr. Seder, first of all, sit back and relax, all right.

Secondly, when I sustain an objection to a question, that means you cannot answer it. All right.

Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Fine. Go ahead.

Q How much income do you have now, Mr. Seder?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Does your wife work?

A No.

Q Do you own any lots at Rio Rancho Estates?

A Yes.

Q How many?

A One acre.

Q Two lots?

A Two lots.

Q How much money have you paid so far on those two lots?

A Approximately $2,000.

Q Does that include principal and interest?

A Yes.

Q When did you first have any contact with Rio Rancho Estates?

A January 1972.

Q What was the nature of the contact?

A I was invited to a dinner.

Q Did you receive an invitation in the mail?

A Yes, sir.

Q Did you go to the dinner?

A I did.

Q Did you go alone or with your wife?

A With my wife.

Q Do you recall where the dinner was?

A At Cooky's in Brooklyn, Kings Plaza.

Q It is a restaurant in Brooklyn?

A Yes, sir.

Q What happened when you arrived at the restaurant?

A We were invited to sit by tables, introduced with some people and they said, you are going to get your salesman and you will be happy you came over.

Q A sales person came over to the table?

A Yes, sir.

Q Do you recall the sales person's name?

A Mrs. Lavakian.

Q How many people were at your table?

A Between seven and eight people.

Q Do you recall how many people were in the room?

A Approximately sixty people.

Q What, if anything, did your sales person say to you initially when she first came to the table?

MR. FLEMING: Is this to the witness personally, if your Honor please?

THE COURT: Or at the table where he was seated and he heard her speak.

Q What did she say, Mr. Seder, if anything?

A She said, they are going to be showing some films and the people came over to see something, money for investment to buy property in Rio Rancho Estates and it is a very good time of the year to do it.

Q Let me show you Government's Exhibit 256 in evidence, which is labeled a confidential survey, and ask you if you have ever seen this before.

A No, I did not.

Q Take a look at the inside.

A I did not see it.

MR. DEVORKIN: You don't recall that.

Q Were you asked to fill anything out at the table?

A Yes.

Q What was it you were asked to fill out?

A Do we have any money in the bank. Do we own any property. We really filled it out.

Q Was the document you filled out anything like Government's Exhibit 256?

A Something like it, but not this.

Q Did you see any brochures of any kind on the table?

A Yes, we saw some.

Q Let me show you Government's Exhibit 388 in evidence, a brochure called "This is My Land" and ask you if you saw that brochure that evening? Just take a look through it quickly.

(Pause)

A Yes, I saw it.

Q Was this on the table where you were seated?

A It was on the table where I was sitting and it was also near the movie where they are supposed to show the pictures.

MR. ARKIN: Your Honor, I am sorry, I didn't get that.

THE COURT: Also near the movie where they were supposed to show the pictures.

MR. ARKIN: Thank you.

Q After Mrs. Lavakian spoke, what happened next?

A They start to show pictures, slides, it was going back and forth about Rio Rancho Estates, and then a movie came up. The governor was talking from New Mexico.

Q Was there a speaker at the front of the room before the movies began?

A Yes, there was a man. I do not remember his name.

Q Did he say anything before the films began?

A Yes, he said he was going to show us beautiful things, the climate, the way of life, the relaxation and the good fortune for the people who were going to buy property at Rio Rancho Estates, the way of life that is going to be for everybody.

Q How many films did you see that night?

A Two of them.

Q Do you recall their names?

A Something with the west side.

Q West Side Story?

A Something like it.

Q Do you recall the name of the other film?

A No, I don't remember the other name.

Q Do you remember the name "Your Golden Future"?

A Oh, yes, this I do.

Q Was that the name of the other film?

A No, I am not sure, but I remember the name

Golden Future.

Q Did the speaker say anything between the films?

A Yes, he was again talking about Rio Rancho Estates and what good opportunity it is to be there and other things.

Q What do you recall about the first film?

A The first film I thought it was put out from the State Commerce of the State of New Mexico.

Q The commerce --

A The Commerce Department of the State of New Mexico. It looked very nice. It was nice and understandable and it looked very good to me.

Q Do you recall if you were told who made that film, the first film?

A No, I don't remember.

Q What do you recall about the second film?

A The second film I saw people riding on horses. I saw people doing picnicking. I saw people coming around by the Panorama in from the Rio Rancho Estates, guests that had visited before and they said it was beautiful and nice. That is all what I saw.

Q After the films were over, did the speak say anything again?

A Yes.

Q Tell us everything you remember about what the speaker said after the films were over?

A The speaker said it's a good investment. It's a beautiful opportunity. Rio Rancho Estates is surrounded from three sides by mountains and all the growth is going to go towards Rio Rancho Estates and in a short while your money is going to double and maybe higher, for a good investment and for other things, for retirement, this is what I remember.

Q When you said Rio Rancho was confined on three sides, did he say Rio Rancho was confined on three sides or Albuquerque?

You said that Rio Rancho was confined by mountains --

A No, Albuquerque City.

Q Do you recall whether the speaker said anything about other types of investments?

A Yes, he compared Staten Island, he compared Canarsie.

Q What did he say?

A He said look what happened in real estate. In a short while it doubled your money, you cannot buy no more and this is what was goingto happen in Rio

Rancho Estates in New Mexico.

Q What did he say about the stock market?

A He said the stock market -- Rio Rancho is better than the stock market. The stock market is not so good as Rio Rancho would be.

Q Did he explain why?

A Yes, because real estate is going up and so is the value of your property.

Q After the speaker finished talking, what, if anything, happened next?

A The sales lady said now is the time to buy your land and people start -- no, I remember he came up and he said they have sheets of paper. This land is for sale. This you could buy and whoever wants to buy it, now is the time.

Q Did anybody else in the room say anything at that time or do anything at that time?

A Yes, people start to pick up their hands, hold the Lot 17, hold this lot and they start to get busy with their business.

Q Did the saleslady say anything to you about what was happening or explain to you what was happening?

A Yes, people are buying land and they are holding on the land, like they reserve themselves the property.

Q What did you think was happening?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

MR. DEVORKIN: I am sorry, your Honor, I didn't hear you.

THE COURT: Sustained.

Q On the basis of what the sales lady said to you and what you saw happening in the room, what did you think was happening?

MR. ARKIN: Objection.

THE COURT: What the sales lady said he has testified to. The jury has heard it.

MR. DEVORKIN: I want to ask him what he thought on the basis of that.

THE COURT: You don't have to think much whether he testified that the sales lady said the land was sold. He couldn't think it wasn't sold, could he?

Q What did your sales lady begin to do at that point, if anything?

A She asked me how much land could we buy. It sound good to me. She sound to be a nice, honest woman, so we decided we are going to buy an acre of land.

Q Do you recall which unit you bought the acre in?

A Unit 132, section 26.

Q Did Mrs. --

THE COURT: What unit was that, Mr. Seder? Unit what?

THE WITNESS: Unit 132, section 26.

Q Mr. Seder, let me show you Government's Exhibit 141-A for identification and ask you if you recognize it.

A Yes, it's mine.

Q Is that the contract you signed that night?

A Yes.

Q Is that your signature at the bottom?

A Yes, it is.

Q Is that your wife's signature?

A It is.

MR. DEVORKIN: I offer 1.1-A, your Honor.

MR. ARKIN: May I see it, please.

No objection.

XXX (Government's Exhibit 141-A received in evidence.)

MR. DEVORKIN: May I just read a portion of it, your Honor?

THE COURT: Hasn't that been read to the jury once?

MR. DEVORKIN: I just want to read the portions that were filled out with respect to Mr. Seder.

THE COURT: All right.

(Mr. Devorkin read from Government's Exhibit 141-A in evidence to the jury.)

Q I take it you bought two acres of land that night, right?

A Yes.

Q Did Mrs. Lavakian say anything to you about the particular lots that you were buying that night?

A She said it's very good for investment and I took the people's word for it.

Q I am sorry?

A I took the lady's word for it.

Q Were you told anything about reselling your property?

A Within six months we got to inspect our property in Rio Rancho Estates, go on a tour, inspect it within six months. If you are not satisfied, we could get our money back.

Q Were you told anything about reselling the property?

A Yes. As soon as they sell all the property in Rio Rancho Estates, they are going to put up a real estate office in case you want to sell it, you could sell it any time you wanted.

Q Was anything said to you about how fast they were selling Rio Rancho Estates?

A Within two or three years.

Q Was anything said to you about how fast Rio Rancho Estates was developing?

A Yes. Very rapidly, between five to six years, seven years it would be all completed.

Q What, if any, improvements did you think there would be on your property?

A Roads, electricity, water and sewer and some houses.

Q What was the principal reason for your buying these lots?

A For a future investment and retirement.

Q Would you explain to the jury how you were going to use these lots for investment and retirement?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

MR. ARKIN: As to form.

Q You can answer the question.

A We bought the land for investment because the prices the way it looked and the other places it was going up. Within a couple of years it would double your money. We would try to sell one acre of land and try to divide the lots into quarter lots for my children, if it is possible, they should be able to live near us.

Q One acre for your family and one acre to sell?

A Yes.

THE COURT: He only owned one acre.

MR. DEVORKIN: He owned two acres, your Honor.

THE COURT: That's not what he said. He said he owned one acre, two lots. I thought the lots were half acres.

Q Mr. Seder, you owned how many acres of land?

A We owned two from the beginning. Then we cut it out for one.

THE COURT: Then you what?

Mr. Seder, you owned two acres, you bought two acres that night you went to the dinner?

THE WITNESS: Yes.

THE COURT: Then what did you do?

THE WITNESS: Then when we saw the property, your Honor, we didn't like what we saw. We wanted to come back and we asked for the money. They refused it. So they said if you don't keep your property, you are going to lose all your money or the property, one of the two. So we were a little bit scared so we decided to keep one acre and make sure as to make the payments.

THE COURT: What did you do with the other acre?

THE WITNESS: They took it back.

THE COURT: They didn't give you your money back?

THE WITNESS: No.

THE COURT: They took it back but didn't give you your money back?

THE WITNESS: No.

THE COURT: All right.

Q You continued to make payments on the one acre, right?

A Yes, sir.

Q Were you told anything at the time you bought the two acres about whether you could divide up these four lots in any way?

A No. The only time we could do it if we wanted to build right now, we could exchange for one quarter of an acre where the buildings are going on right now and we could start to build right now.

Q Mr. Seder, I want to show you a document, which is marked 314 in evidence.

MR. DEVORKIN: Your Honor, I will represent that this is an exact copy of 314 in evidence, if counsel will take my word for that.

Q Would you take a look at the document and tell us whether you have ever seen that document before.

A Yes, I saw it yesterday.

Q I gave it to you, I showed it to you?

A Yes, you showed it to me and I did read it.

Q Did you read it all the way through?

A Yes, the way it sounds and the way it was.

Q Are those your initials at the top of it?

A It's mine.

Q What is this document, 314, as far as you can tell?

A It's the sales speech in reference to Rio Rancho Estates from the salesman how to buy and how to invest things and do high things for us.

Q The one you heard the night that you bought?

A Yes.

Q After this first dinner, did you go to other dinners?

A Yes.

Q About how many?

A Two or three.

Q Did you hear sales presentations at those dinners?

A Yes.

Q Were those presentations you heard at those subsequent dinners similar or different than the one you heard at the first dinner?

A Similar, something like ti.

Q Was Mrs. Lavakian at those dinners?

A Yes.

Q Did she invite you there?

A She did.

Q Do you recall whether some of these dinners were for home site owners of Rio Rancho?

A Home site owners and also guests.

Q Was anything said to you at these subsequent dinners about your own property?

A Yes, it's going up, it's going up in prices.

Q Was anything said to you about development in connection with your own property?

A I do not remember.

Q Did you ever go to Rio Rancho Estates?

A Yes, I did.

Q When was that?

A May 17, 1972.

Q Did you go with your wife?

A With my wife and a whole group of people.

Q You went on a tour?

A Yes.

Q How much did it cost you to go on the tour?

A 475 or $450.

Q For what purpose did you go?

A To visit our property we purchased in case we arenot satisfied we should be able to get our money back.

Q Do you recall what day of the week you arrived at Rio Rancho?

A Wednesday.

Q Do you recall what day of the week you came home?

A Sunday.

Q Please describe to the jury what happened on your tour, what you did on the tour?

A We were set up in the Holiday Inn. We had a wonderful time. We were treated like guests and kings.

On a Sunday they took us out to see our property.

Q Before you went out to see your property, were there other activities that you did with the group?

A Yes, we went to night clubs, we saw shows. It was very nice, everything good, and Mr. Miller had a speech for us. He took us to Panorama Inn at Rio Rancho Estates.

Q Before that happened, I want to clarify a couple of things. Were you with the group the entire time?

A Yes, the entire time.

Q Did you have a bus or something like that?

A Yes, two buses.

(Continued on next page.)

Q Was there somebody from Rio Rancho Estates with the bus?

A Yes.

Q When you were taken to Rio Rancho Estates to see your property, before you saw your property, was Mr. Miller there?

A Yes.

Q Was there a Mr. Geller there?

A I do not remember.

Q Did Mr. Miller say anything to the group?

A The investment, beautiful property, nice land and we are going to see our property and so and so.

Q Did he say anything about Albuquerque or the growth of Albuquerque?

A Yes. He says is growing, the population is getting higher and the real estate is going up in price.

Q Then what happened?

A Then a young fellow, a salesman, came around, took us in a car, me and my wife, went we should see our property.

Q How long did it take you to get there?

A Between 35 to 40 minutes.

Q Did you have any conversations with the salesman on the way out to see your property?

Q What happened when you got to your property?

A I didn't like what I saw.

Q Did you tell the salesman?

A Yes.

Q What did he say, if anything?

A He didn't say nothing.

He took us back. He didn't talk to us any more.

Q Did he take you to see somebody else?

A He took us back to see Mr. Miller.

Q Did you have any conversations with Mr. Miller?

A Yes. We told Mr. Miller we do not like the property, we want our money back.

Q Did you explain to him why?

A Yes.

Q What did you tell him?

A Tell him we don't like what we see it, it's in the middle of no where, and I don't see nothing there, no improvements, nothing, and I don't see -- I don't know how we are going to get 20 years from now.

Q What did Mr. Miller say to you, if anything, when you told him that?

A He says, "I can't do nothing for you. You have to go back to New York City and try to straighten out with the AMREP Realty Corporation."

THE COURT: The what?

THE WITNESS: AMREP Realty Corporation.

Q When you complained to Mr. Miller about your property, did Mr. Miller say anything to you about your property or about keeping your property?

A He was arguing with me. I don't remember exactly about what. But I say we didn't want it, we weren't friendly any more.

Q When you say he was arguing with you, can you try to explain as best you can what he was doing?

MR. FLEMING: What he was saying?

THE COURT: What he was saying.

Q What he was saying?

A "Why don't you like it? Why don't you want it? It's good, it's nice," here and there.

I says no, we didn't like it, it doesn't look good to us, we are not happy with what we saw.

Q How long did you spend with Mr. Miller talking to him?

A About 10, 15 minutes.

Q What did you do when you got back to New York, if anything?

A We tried to make appointment with the realty corporation. It took a long time before we finally got to see them.

Q You came back in May, I take it, right?

A Yeah.

Q Did you call the office?

A Yes.

Q How many times?

A Three or four times.

Q Did you go into the office?

A Yes, we did.

Q Did you get to see Mr. Miller or Mrs. Lavakian or anyone else?

A Yes, we went to see Mrs. Lavakian and she finally made an appointment to see Mr. Gellerman or somebodyelse, I don't remember, to get through with the deal.

Q Was that Mr. Geller, Leonard Geller?

A Yes.

Q Did you have a meeting with Mr. Geller?

A No. We had a meeting with Mrs. Lavakian, but I guess the gentleman was Mr. Geller.

Q What was said at that meeting, if anything?

MR. FLEMING: Fix a time, if your Honor please.

Q Do you remember when that was?

A It was on June or July, 1972.

Q What was said at that meeting, if anything?

A They told us if we do not keep the property, we are going to lose everything we got, we made an exchange of two acres from one, we lower down our payments and we settled I make the payments, monthly payments, not to lose our money.

Q Let me show you what has been marked as Government's Exhibit 141-F for identification (handing).

Take a look at that.

Let me ask you if you ever saw that before.

Take a look at the envelope, also.

A This is it.

Q You got a letter? This letter came to you?

A Yes.

MR. DEVORKIN: I offer 141-F.

MR. ARKIN: No objection.

Are you offering the envelope, also?

MR. DEVORKIN: Yes.

XXX (Government's Exhibit No. 141-F marked for identification received in evidence.)

MR. DEVORKIN: Your Honor, may I read 141-F?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 141-F in evidence to the jury.)

GTjw 1 Seder - direct

Q Did there come a time after you received this letter, Government's Exhibit 141-F, when a new contract was written up for the one acre?

A Yes.

Q Was there also -- withdrawn.

During that period of time, did it also occur that you stopped payments once or twice?

A Yes, we did.

Q Showing you what has been marked as Government's Exhibit 141-H for identification, would you look at that and tell us whether you recognize it (handing).

A Yes, I do recognize it.

Q What is it?

A That's in reference to the payments on the property in the Rio Rancho Estates.

Q Did you receive that letter?

A We did receive this letter and we did refuse --

Q All right. Just take one thing at a time.

MR. DEVORKIN: I offer 141-H.

MR. ARKIN: No objection.

(Government Exhibit 141-H marked for identification received in evidence)

MR. DEVORKIN: May I read 141-H, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibit 141-H in evidence)

Q Did you have another meeting after this letter was sent to you?

A I do not remember.

Q You signed another contract?

A Yes.

Q Let me show you what has been marked as Government's Exhibit 141-C for identification.

Please take a look at it and tell us whether you recognize it (handing).

A Yes, I do recognize it. This is the new contract.

MR. DEVORKIN: I offer Government's Exhibit 141-C.

MR. ARKIN: We have no objection to the two page document as it is.

(Government Exhibit 141-C received in evidence)

Q Mr. Seder, there are actually two documents that are 141-C.

Is the bottom long document the contract that you signed, the new contract?

A Yes. This is the one. That's me and this is my wife on the bottom (indicating).

Q And that was for monthly payments of $35.87; correct?

A But how can we pay $33.39.

Q Did you get a notice from Rio Rancho Estates that the monthly payments were reduced slightly?

A I do not remember.

Q Did you receive the top document from Rio Rancho Estates at some point which indicates monthly payments of $33.39 as opposed to $33.87?

A Maybe we got it. I see it's approved.

MR. DEVORKIN: May I just read the pertinent parts to the jury, your Honor?

MR. ARKIN: Your Honor, I don't know what the pertinent parts are.

THE COURT: Is is in evidence, so he can read any portions he wants.

MR. FLEMING: I just object to the characterization, your Honor.

THE COURT: Is that your objection?

MR. ARKIN: Yes.

MR. DEVORKIN: I will read any parts you want me to.

THE COURT: I sustain the objection that you are reading the pertinent parts. You are reading an exhibit.

(Mr. Devorkin read from Government Exhibit 141-C in evidence.)

THE COURT: We will suspend for lunch. Return at 2:15, please.

(Jury left the courtroom)

THE COURT: Counsel, I am not clear as to what this evidence shows.

Wasn't there a reduction of the two acres to one acre for the same two lots now included in 141-C as were included in 141-F?

MR. ARKIN: Yes, your Honor.

MR. DEVORKIN: Yes. Mr. Seder reduced from four lots to two lots.

THE COURT: But he did that back on December 15th, didn't he?

MR. DEVORKIN: The transaction was actually not consummated until March 6, 1973.

THE COURT: In other words, Exhibit 141-C has nothing to do with 141-H?

MR. DEVORKIN: It is not part of the transaction, that's right.

The letter, 141-H, came in between the letter which is --

THE COURT: In other words, 141-C merely confirms the letter 141-F, is that right?

MR. ARKIN: The subsequent contract --

MR. DEVORKIN: In essence, yes, your Honor.

(Luncheon recess)

AFTERNOON SESSION

2:15 P.M.

(In open court - jury present)

ALLEN SEDER, resumed.

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. DEVORKIN:

Q Mr. Seder, when you reduced your contract from two acres to one acre and signed the new contract in March of '73, did you get a credit for your principal payments that you had made up to that point?

A Yes.

Q By the way, when you were at Rio Rancho Estates and said you didn't like your property, did you get any kind of an extension to cancel?

A A few months.

Q When you first signed the contract in 1972, did you get any kind of insurance on that contract when you signed it?

A Yes. If I make another payment of ten percent, I will be covered with insurance in case something happened to me, the property is going to be paid up.

Q That was in addition to your down payment?

A Yes.

Q Did you make another payment of ten percent?

A Yes, I did.

Q It was after the dinner?

A By the second dinner.

THE COURT: When was that?

THE WITNESS: About a week later or so.

MR. DEVORKIN: Mr. Clerk, will you mark this Government's Exhibit 141-M.

(Government's Exhibit 141-M marked
xx for identification)

MR. DEVORKIN: And Government's Exhibit 141-N.

(Government's Exhibit 141-N marked
xx for identification)

Q Let me show you Government's Exhibit 141-M for identification. Do you recognize it?

A Yes.

Q What is it?

A This is a check made out by Mrs. Lavakian and my wife signed her name to it. That is the first payment on the two acres of land.

Q That was at the first dinner?

A Right.

THE COURT: Wait, is that the down payment?

THE WITNESS: Yes, your Honor.

THE COURT: That was the down payment.

THE WITNESS: The down payment.

THE COURT: All right, go ahead.

THE WITNESS: $740.

Q Government's Exhibit 141-N for identification, what is that?

A This is the second payment for the insurance.

Q That was credited towards your contract?

A Yes.

MR. DEVORKIN: I offer 141-M and N.

MR. ARKIN: No objection.

(Government's Exhibits 141-M and 141-N received in evidence)

THE COURT: Let me see them, please.

(Pause)

THE COURT: All right.

MR. DEVORKIN: If I may, your Honor, both checks are for $740 and the first one is dated February 1, 1972.

The second one is February 14, 1972.

BY MR. DEVORKIN:

Q Mr. Seder, I am showing you Government's Exhibits 141-G and I for identification.

Would you look at both of them.

A Yes.

Q Is that your wife's signature?

A It is.

Q Was that signed when you signed your second contract?

A Yes.

MR. DEVORKIN: I offer 141-G and I.

MR. ARKIN: No objection.

(Government's Exhibits 141-G and 141-I received in evidence)

MR. DEVORKIN: May I just read those to the jury, your Honor?

THE COURT: Yes.

(Mr. Devorkin read from Government's Exhibits 141-G and I in evidence to the jury)

BY MR. DEVORKIN:

Q Mr. Seder, showing you Government Exhibit 388 in evidence and directing your attention to pages 8 and 9, did you ever see those particular pages at any of the dinners you attended, particularly the first dinner?

A The only thing what I saw is the map.

Q When did you see the map?

A When I did find the brochure on the table and I opened it up and I saw the map of Albuquerque, New Mexico.

MR. DEVORKIN: May I just show the jury the map he is referring to, your Honor.

(Pause)

Q Mr. Seder, when you bought your property, did you know when Rio Rancho began to sell its property?

A No.

Q Did you know how large Rio Rancho was in comparison to Albuquerque?

A No.

Q Did you think it was smaller or larger?

A Smaller.

Q Rio Rancho was smaller than Albuquerque?

A Of course.

Q Did you know that the Albuquerque Planning Commission had made a study of the direction of Albuquerque's growth and the amount of land for such growth?

MR. ARKIN: Objection, your Honor. There is no foundation for such a question.

THE COURT: Sustained.

MR. DEVORKIN: That question appears at page

908 of the transcript, your Honor, where Mr. Mandel testified and your Honor permitted me to ask the question.

THE COURT: I sustain the objection to this with this witness.

Q Mr. Seder, if anybody connected with Rio Rancho had ever told you when you bought your lot or your lots that there was no resale market for these lots or that it would be very difficult to resell these lots, would you have bought your property?

A No.

Q If anybody connected with Rio Rancho had told you that AMREP Corporation had commissioned its own report about the growth ofAlbuquerque and that the report stated that Albuquerque's growth was to the northeast and would have no effect on Rio Rancho for twenty years, would you have bought the property?

MR. ARKIN: No foundation, your Honor. I object.

THE COURT: I don't know why you didn't object to the one before. I ruled that out and you have done it on another witness and I told you it was out, Mr. Devorkin.

Next question.

MR. DEVORKIN: Your Honor --

THE COURT: Next question. Don't stand there and argue with me.

MR. DEVORKIN: Just so the record --

THE COURT: Put your next question.

MR. DEVORKIN: Can I finish --

THE COURT: Put your next question.

Q Would you answer the question that is pending, Mr. Seder?

THE COURT: He has answered the question that is pending.

MR. DEVORKIN: I don't think he answered the question that Mr. Arkin objected to, your Honor.

THE COURT: He did. Next question.

MR. DEVORKIN: He answered the first question.

THE COURT: Mr. Devorkin, I told you to put the next question and don't ever ask a witness in this court a question which I have previously ruled out.

You have asked the same question on one of the victim witnesses before and I told you that was not in this case.

Now, put your next question and let's get on.

MR. DEVORKIN: I have no other questions, your Honor.

THE COURT: Good, sit down.

Cross examination.

XXXXx

CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Seder, my name is Stanley Arkin. I am one of the defense lawyers.

Mr. Seder, earlier today you said that you had placed your initials upon Government Exhibit 314. May I show that to you?

A Yes.

Q These are your initials appearing on the first top half of the page?

A Yes.

Q You said that you read this very carefully?

A Yes, I did.

Q Word for word?

A Yes.

Q You testified earlier today that you were told at the dinner party which you attended at Cooky's in Brooklyn that the speaker had said that you would double your month on your property?

Do you remember testifying to that?

A Within a short while,yes.

end t

PM

Q Would you show me, sir, where in this transcript, which you said was like the presentation that you heard at Cookie's in Brooklyn, it says that you would double your money in a short time?

MR. DEVORKIN: I object. That's not inconsistent.

THE COURT: Overruled.

MR. DEVORKIN: He said like.

THE COURT: Overruled. You got it in on that representation.

A Could I listen to the question again?

Q Whre in that thing, meaning 314, that you read and put your initials on and read word for word does it say, as you said earlier today, that you would double your money in a short period of time?

A In an approximate time, yes.

Q Show me where in that transcript it says that which you say you read.

A I did read it. I understand a little bit, don't I?

THE COURT: You don't understand, Mr. Seder. You have testified that the speaker whose presentation you have before you told you that you would double your money in a short period of time. That's what you told us this morning.

THE WITNESS: Yes, within a couple of years.

THE COURT: Where in that document, which is a transcript of what you say the speaker told you, do you find the speaker saying that you would double your money in a short while?

THE WITNESS: No, it doesn't say it in here.

Q You said earlier today that that transcript that you read word for word was what you heard at Cookie's in Brooklyn at that dinner party, is that right?

A I went to other dinners, too.

THE COURT: We are not talking about that.

Q We are talking about Cookie's.

THE COURT: Wait.

MR. ARKIN: Excuse me, your Honor.

THE COURT: Mr. Seder, you are being asked about what happened when you bought your piece of property. That's what you are being asked about. All right.

THE WITNESS: Yes, sir.

THE COURT: Just focus on that. If Mr. Arkin tries to shift the time on you, I will straighten him out, but right now I want you to bear in mind the question being asked of you going to the first dinner party when you bought the property, all right?

THE WITNESS: Yes.

THE COURT: Ask your question again, Mr. Arkin.

Q At the first dinner party, Mr. Seder, were you told by the speaker at the first dinner party that you would double your money in a short time?

A He didn't say exactly double your money.)

Q Excuse me, Mr. Seder. I will ask the questions.

How many dinner parties did you attend altogether?

A Three or four of them.

Q Over what period of time, sir?

A Within a period of six to seven months.

Q What period was that?

A Between January and I would say -- 1972 -- until October --

Q '72?

A Yes.

Q Did you ever take any friends of yours to a dinner party?

A Only once my sister-in-law went with me.

Q You took your sister-in-law to a dinner?

A Yes.

Q Did your sister-in-law buy property?

A No.

Q Going back to the first dinner party where you signed a contract to buy two acres, do you recall that?

A Yes.

Q Do you know what a contract is?

A A contract is a binder to secure your property.

Q You understand generally what a contract is?

A No, not exactly.

Q You know that when you sign a contract you have an obligation to somebody?

A Yes.

Q And you know that that person has an obligation to you?

A Yes.

MR. ARKIN: May I have 141-A?

Q Is this, sir, a contract which you signed at Cookie's on February 1, 1972?

A Yes.

Q I take it, Mr. Seder, you don't sign things without reading them first, do you?

A No, we don't.

Q You read things before you sign them?

A We do, yes.

Q Indeed when you were at that dinner party you said just a few moments ago that you read various brochures which were on the dinner table, isn't that right?

A Yes.

Q You looked at maps, correct?

A Yes, I saw a map.

Q And you saw other brochures, too, didn't you?

A Yes.

Q With respect to this particular agreement over here, did you read in the agreement that you had a full six months to get back your money if you weren't satisfied after you visited the property?

A Yes.

Q You knew that was right in the contract?

A Yes, it was written right here.

Q Pointing to the middle of the page of Exhibit 141?

A Yes.

Q Did you also know that in the very same contract that if utilities, meaning electricity and water and sewage had not reached your property that you would have a right to exchange your lot in for a building lot when you wished to build, did you read that in the contract, too?

A I do not remember. Exactly this I do not remember.

Q Would you look at paragraph 2 on the flip side of Exhibit 141. Does that refresh your recollection? Would you please read that now?

A Yes.

(Pause.)

A Yes, they said we could have a lot. They will exchange a lot to build in the places where they are building the property now.

Q In the event utilities were not on your lot, isn't that right?

A No, they wasn't, but they said it's going to be there.

Q Excuse me, but in the event utilities were not on your lot you would have a right to exchange, isn't that right?

A Yes.

Q You just said to me that they said utilities would be there on your lot?

A Yes.

Q You said earlier that you were told utilities would be on your lot in what period of time?

A Within a couple of years.

Q Within a couple of years?

A Yes.

Q Do you recall testifying previously in this court house?

A Yes.

Q Do you recall Ms. Hynes had you come down and you testified here under oath before? Do you remember that?

A Yes.

Q That was in January of 1975?

A Yes.

Q Do you recall being asked this question and giving this answer?

MR. DEVORKIN: Where are you reading from?

MR. ARKIN: I am referring to page 23 of Mr. Seder's testimony of January 22, 1975, designated as 3523-A, Mr. Devorkin.

Q Question at page 23:

"Q Were you given any assurance as to when that land would be developed?

"A No. As soon as they finished with sections, they are going to spread more and more and each one section to another."

Do you recall being asked that question and giving that answer?

A Yes.

Q At that time?

A Yes.

Q That was under oath?

A Under oath.

Q That was true then?

A Yes.

MR. ARKIN: May I have Exhibit 791 and also the HUD report. These have already been marked by the government. May I use the government marked copies or do you want me to use my own?

MR. DEVORKIN: May we see them?

MS. HYNES: What is the number, Mr. Arkin?

MR. ARKIN: I believe it is 791.

MS. HYNES: Here is 791, Mr. Arkin.

MR. ARKIN: Thank you.

MS. HYNES: Is there another exhibit that you want?

MR. ARKIN: Here it is.

Q Mr. Seder, referring again to 141-A which was the contract in February of 1972, are you able to identify the initials at the lower right-hand corner?

A Yes, this is mine and this is my wife's.

Q Does that acknowledge that you received copies of a property report and a report filed with the office of Interstate Land Sales Registration?

A Yes, we did.

Q You received those reports, didn't you?

A Yes, but we didn't read them there. We took them home with us. We received the reports.

Q You received the reports and you took them home with you?

A All the brochures, whatever we got.

(Continued on next page.)

Q I address your attention to the fifth paragraph on the front side of Exhibit 141-A. I am indicating that with my finger.

Are you able to read that?

A Yeah.

Q Do you recall, then, in the contract which you signed and which you read, that you had an option to avoid this agreement, to cancel it entirely, for 48 hours after you signed it if you did not receive these reports two days prior to signing it?

A I do not remember.

Q Do you agree it is here in your contract?

A I agree here. I didn't read this. I do not remember it if I did read it.

Q But you read the contract before you signed it?

A Because I looked at this six months guarantee --

Q That is theonly part of the contract you read?

A That's what it looked to me. That's all what I saw.

Q You do recall acknowledging receipt of these two reports, right?

A Right. But this is what I am interested in, the six months guarantee.

Q So you read one paragraph, then you skipped two paragraphs and read the last paragraph?

A Yes.

Q You didn't read the paragraphs in between?

A No.

Q I show you Government's Exhibit 791, and ask if you are able to identify this document (handing).

A No, I didn't read this.

Q Do you recall receiving an offering statement, a New York State offering statement?

A My wife must have gotten it, but I don't remember reading this.

Q You don't remember reading it?

A No.

Q You know you took it home with you?

A Yes, we took home with us this papers. We saw them there.

Q So you saw this paper at home with you?

A Yeah, we saw it.

Q This is a paper you saw at the dinner and took home with you?

A Right.

Q I address your attention to page 3 of Exhibit 791, which is in evidence all right, I take it, your Honor --

MR. ARKIN: It is not?

THE COURT: No.

MR. ARKIN: Then I offer it in evidence.

MS. HYNES: Do you have a date on it?

MR. ARKIN: It is your exhibit.

It has RR -- it has October 8, 1971.

MS. HYNES: It is not in evidence.

MR. ARKIN: It is not in evidence?

We offer it as a defendant's exhibit, then.

MR. DEVORKIN: No objection.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit AD received in evidence.)

Q I show you, Mr. Seder, please, page 3 of Exhibit AD, the second paragraph under the heading "Offering."

Please read that.

A Yeah.

Q Do you recall having seen in this particular booklet which you took home with you that night from the dinner party at Cookie's the language, "Lots may also be purchased for speculative purposes, but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years, that a percentage of the purchase price paid is included therein for use in advertising and development and that in trying to make a resale the purchasers may be competing with the company which has thousands of lots to sell."

A I never did read this. I didn't.

Q But you knew you had the booklet, isn't that so?

A Yeah, I knew I had a booklet.

Q Didn't you consider buying this land for you, for your wife and for your children to be a very serious investment, indeed?

A Yes.

Q Something worthy of reading the contract?

A Yes.

Q And reading the material which you were given about the property which you had purchased?

A Yeah, I'm listening.

Q But it is still your testimony you didn't read these documents which had to do with what you were buying?

A I was looking on this thing, because I had no time, there was a party going on, I was working very hard all week and the party was going on. This is what I was looking, at this contract, which was good to me.

Q All right. You couldn't do it during the party, you say, right?

A No.

Q You discussed that with Mr. Devorkin earlier today, didn't you?

A I did not.

Q Let me ask you:

When you took it home that night, did you read it that night?

A No.

Q What about the next day? Did you read it the next day?

A No. I come home at 6:00 at night and my day is not over.

Q How about 7:00, did you read it at 7:00?

A No. I wasn't able to do it. I was looking at the contract. I looked at thishere and it looked very good to me --

Q Mr. Seder --

THE COURT: Mr. Seder, listen to the question.

Q Mr. Seder, I am asking questions. All I want are answers. Right?

Did you take time to read these documents the next day?

A No, I didn't.

Q How about the day after that; did you read it?

A No.

Q You considered this a serious thing, didn't you?

A A serious thing to me is the contract, what I signed for.

Q Right.

A And I --

Q The contract has in it language which says that you shall have the option to void the agreement if you haven't received certain reports.

You agree with that, don't you?

A Yes.

Q So part of the contract refers to these two documents, correct, or this document?

A Yeah, yeah, I guess so.

Q So if you read the contract, that is, at least the top and the bottom paragraph, not the in-between paragraphs, wouldn't you also want to read this particular document to see what it was you bought.

A I didn't have a chance to do it.

Q In two days you didn't have a chance to do it?

A No.

MR. ARKIN: Would you please mark this as AE for identification.

(Defendants Howard Friedman and Henry Hoffman Exhibit AE marked for identification.)

XXX

Q I show you AE for identification . This is the other report which you received, isn't it (handing).

A I never saw this one. I never did see this one.

Q I show you your initials which you just identified towards the bottom of Exhibit 141-A. It says you acknowledge receipt of a property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

Those are your initials, right?

A Those are my initials.

Q And you acknowledged the receipt of these particular reports, is that right?

A Yeah.

Q And you say you read the contract?

A Right.

Q Didn't you make sure if you acknowledge receipt of something that you had it?

A No, I didn't make sure. I just was interested in this (indicating); I'm telling you right now and I'll say it again.

Q Just one provision of the contract?

A And then I figured to myself when I'll get time I'll read the rest of it. I didn't have a chance to do it.

Q How about in the next several months, did you read it?

A No. You see, we made arrangements to go to Rio Rancho Estates.

Q And you didn't read these things in the next several months, right?

A No. My wife did, but I didn't.

Q Did you discuss it with your wife?

A Yeah. We looked at the contract that says in Rio Rancho Estates we could go and visit within six months. We made arrangements to see it, the property.

Q So what you focused on in the contract was the one provision which said that you had a right to cancel in six months, right?

A Right.

Q And did you visit Rio Rancho within the six months?

A Yes, we did.

Q And you saw your particular piece of property?

A We saw it.

Q And your particular piece of property was at that time six or seven miles from the developed area, isn't that right?

A Yes.

Q Now, what happened out in Albuquerque, you say, was that you were dissatisfied with your property, is that correct?

A Right.

Q And you told that to Peter Miller?

A Mr. Miller, yeah.

Q You know he is dead now?

A I knew it. I know.

Q But you didn't say anything or, rather, the salesman or the individual who took you out to see the property, he didn't say anything to you, did he?

A No.

Q Just Mr. Miller?

A Yeah.

Q And you and Mr. Miller -- excuse me.

When you spoke to Mr. Miller, was your wife present?

A Yeah.

Q And you and Mr. Miller and your wife agreed, didn't you, when you were in Albuquerque in Rio Rancho that your contractual right to cancel would be extended --

A For a couple of months.

Q For three months, right?

A Yeah.

Q And you agreed to that, didn't you?

A Yeah.

Q By the way, did you provide Ms. Hynes, Mr. Devorkin, with certain papers?

A Yes, I did.

Q Were you told to bring certain papers here to court today?

A No.

Q Were you told to bring checks in respect to payments which you had made to Rio Rancho?

A No.

Q Were you told to bring brochures or other documents which you received from Rio Rancho?

A No.

Q When was it that you provided certain papers to Ms. Hynes and Mr. Devorkin?

A December -- January, 1975.

MR. ARKIN: Would you kindly mark this as AF.

XXX (Defendants Howard Friedman and Henry Hoffman Exhibit AF marked for identification.)

Q Are you able to identify this document designated as AF, Mr. Seder (handing)?

A Yes, sir.

Q Was that one of the documents which you gave to Ms. Hynes?

A Never did.

Q How are you able to identify it, sir?

A That's my wife's name, my name, the amount from the price of the property, where it was located, and that's all what I know. I didn't sign nothing.

Q Did you ever see this particular piece of paper before?

A No, I did not.

Q Directing your attention to the language which appears at the bottom and the writing which appears at the bottom of Exhibit AF for identification, do you recognize this handwriting?

The answer is no?

A No.

Q Do you recall when you were at Rio Rancho, though, having it written on some form by Mr. Miller or somebody else that the extension refund guarantee would be until August 1, 1972? Do you recall having it written on a form out in Albuquerque?

A I don't remember. I don't remember.

Q Was it Mr. Miller who told you you would have the extra few months to cancel?

A The office in -- the office in New York.

Q They told you that?

A Yeah. AMREP Realty Corporation.

Q Who at that office told you that?

A Mrs. Lavakian was there, the lady. I never talked to --

Q Mrs. Lavakian was out in Rio Rancho with you?

A No, she was here in New York City.

Q In Rio Rancho, weren't you told you had an extra few months to cancel if you wanted to?

A Must have been Mr. Miller, nobody else.

Q But you don't have any recollection of who told you?

A No, I'm not sure.

THE COURT: Wait.

MR. ARKIN: Excuse me.

THE COURT: I still don't know where he was told.

MR. ARKIN: He says he was told in Rio Rancho, if your Honor please.

Q Were you told at Rio Rancho, that is in Albuquerque, when you visited your property, that you would have an additional three months to cancel?

A No, I didn't sign this paper. They showed it to me over there and I didn't want to sign it.

Do you see this map?

THE COURT: Listen to the question.

Q Listen to the question.

When you were in Rio Rancho with your wife, Mrs. Seder, and you were out there and you had a discussion with Mr. Miller, did you and he agree that you would have some additional time in which to exercise your privilege to cancel?

A Yes.

Q That was at Rio Rancho?

A Right.

Q Was that ever reduced to writing while you were at Rio Rancho?

A No. Papers was made out, but I was supposed to sign it. He wanted me to sign it but I didn't want to.

Q Did you see him write anything down?

A I do not remember.

Q All you know is what he said to you, is that right?

A Right.

Q What kind of paper did you provide to Ms. Hynes, do you remember that?

A I beg your pardon?

Q What papers did you provide to Ms. Hynes and Mr. Devorkin? What did you bring them?

A Whatever I had.

Q What did you have?

A I had the contracts and two checks, and that's all.

Q No letters?

A Maybe one letter. I don't remember exactly.

MR. ARKIN: Please mark this as AG for identification.

(Defendant Howard Friedman and Henry Hoffman Exhibit AG marked for identification.)

Q I show you AG for identification (handing)

Is this a copy of the letter which you provided to Ms. Hynes -- rather, strike that -- is this what you provided to Ms. Hynes, this letter?

A I do not remember.

Q Did you ever receive a letter such as this?

A I do not remember.

Q Would you read it?

A To myself?

Q You can read it to yourself, yes.

(Pause)

A I don't remember. Maybe my wife did see it, but I didn't.

Q You don't recall ever having seen this?

A No.

Q During the spring of 1972, you had some difficulty in making payments, didn't you?

A No.

Q Well, was there ever a time when you asked ATC or Mrs. Lavakian or Mrs. Lavakian or anybody else for some additional time to make your payments?

A Don't remember.

Q Do you know what a moratorium is?

A A moratorium sounds to me like making extensions on payments or make it less or more.

Q Did you get an extension on your payments? Did you ever get one of those?

A After we changed the contract.

Q Let's go back early 1972.

You fell down and injured yourself, didn't you?

A Yes, I did.

MR. DEVORKIN: I object, because I sought to bring this out and Mr. Felming objected and your Honor sustained.

THE COURT: This is cross examination. There is quite a difference between what you can bring out on direct and cross examination.

Q You had an accident in 1972, didn't you?

A Yes.

Q And you brought that to the attention of Mrs. Lavakian, didn't you?

A Yes, I did.

Q And you asked at that time for some relief from making payments? You wanted an extension of time, didn't you?

A Yes, I did.

Q And the company gave you ninety days more, didn't they?

A It looks like.

Q Don't you remember that?

A Yeah. I see it -- I saw it in the papers there.

Q Now you remember you got ninety days, don't you?

A Yeah.

Q And you knew that you had a contractual right, did you not, to get ninety days if you had some kind of hardship, isn't that so?

A Yeah.

Q That was your right and the company gave it to you, am I right?

A Yeah.

Q And then later on, after that ninety days -- by the way, does it refresh your recollection that you got your first moratorium or extension of payments in June of 1972; is that right?

A No.

Q When did you get your first extension of payments? When was that?

A It was in March.

Q In March of 1972?

A Yeah.

Q And it went from March until when?

A Till June.

Q Let me show you AG for identification again and see if it can refresh your recollection (handing)

If you will, sir, read to yourself the date which appears in the upper right-hand corner and the first paragraph of AG for identification.

(Pause)

Does that make it easier for you as to when it was you got your first extension of time when to make payments?

A It's the only extension I remember, the ninety days, three months.

Q That you got it in June of 1972?

A Yes.

Q And so you didn't have to make payments until September of 1972, do you recall that?

A Yeah.

Q Did you ever get another moratorium or extension?

A No.

MR. ARKIN: Please mark this as AH.

(Defendant Howard Friedman and Henry Hoffman Exhibit AH marked for identification)

Q Mr. Seder, I want to show you AH for identification, and ask if you can identify this document (handing).

A No.

Q Do you agree that it appears to be a letter addressed to you?

A Yeah.

Q And it says, "Dear Mr. Seder"?

A Yes, because my name is Mr. Seder, yes.

Q And this is your address, 964 East 102nd

Street?

A Yes.

Q In Brooklyn?

A Yes.

Q Do you deny having received this letter?

A I deny it.

Q Do you deny getting a second moratorium or extension of payments?

A Yes.

Q Under oath here in court today?

A Yes.

Q Now, you continued goes to dinner parties, you say, through October of 1972, isn't that so?

A Yes.

Q Which was the dinner party you took your sister-in-law to?

A When I was invited from Mrs. Lavakian -- the one in Queens.

Q That is sometime in the summer of 1972?

A Yes, 1972.

Q It was after you got back from Rio Rancho, wasn't it?

A Yeah.

Q You took your sister-in-law to the dinner, didn't you?

A Yeah.

Q There came a point when you decided you didn't want to keep all your property, didn't there?

A No.

Q You had two acres, right?

A Right.

Q And eventually you came to only have one acre, am I correct?

A Yes.

Q And that was in January or February of 1973, isn't that so?

A Yeah.

Q And a little earlier today, before lunch, you testified that when you gave back the one acre, you didn't get any of your money back, isn't that right?

A No, I didn't get no money back.

Q You got no money back, is that right?

A No.

Q Then after lunch, just a few moments ago, you testified that you got a credit --

A Yeah.

Q -- toward your second acre, is that right?

A Yeah.

Q All the money which you paid to the company was credited to your account on the acre which you hold, is that right?

A Yeah.

Q By the way, did you speak to Mr. Devorkin during lunch?

A Yeah.

Q Now, you finally ended up agreeing with the company, did you not, after negotiating with the company, to keep one acre and give back one acre, is that fair to say?

A Yes, I agreed.

MR. ARKIN: I have no further questions.

CROSS EXAMINATION

XX BY MR. FLEMING:

Q Mr. Seder, did you testify before lunch when Mr. Devorkin was questioning you that you understood that you could build at Rio Rancho only if you built immediately?

A Yeah.

Q Was that your understanding at the time you purchased the property?

A No, not from the beginning, but I understood later on.

Q Am I correct that the contract you signed says that if, when buyer decides to build, it can exchange?

A Yes.

Q I ask you again, did you testify this morning on your oath under examination by Mr. Devorkin that it was your understanding at the dinner that the only time you could build was if you built immediately?

MR. DEVORKIN: I don't remember any testimony about that, your Honor.

MR. ARKIN: Oh, yes, if your Honor please.

MR. DEVORKIN: I think Mr. Arkin --

THE COURT: If it was not explicit, it certainly was inferred.

MR. DEVORKIN: I don't remember anything about it.

A I don't remember exactly.

THE COURT: What don't you remember exactly?

THE WITNESS: You see, I didn't know, your Honor --

THE COURT: Wait.

Don't volunteer anything, just answer, what don't you remember exactly?

THE WITNESS: As far as the -- if I have a right to build right away in Rio Rancho Estates.

I didn't understand right from the beginning.

THE COURT: In other words, when you bought this property on February 1, 1972, you did not believe that you had the right to build right away?

THE WITNESS: To build right away.

Q I show you Exhibit AD, the property report (handing).

Did you testify -- this is Mr. Arkin -- when Mr. Arkin questioned you, did you testify that you did not read that report at the dinner?

A No, I did not read the report at the dinner.

Q Did you testify that you did not have time to read the report at the dinner?

A I had no time to read the report at the dinner.

Q Before you testified here today, did you discuss your testimony with Mr. Devorkin?

A Yes, I did.

Q Do you remember filling out a questionnaire sent to you by the District Attorney here and mailing it back to the District Attorney back in October of 1974?

A Yeah, my wife filled out the questionnaire.

Q Did you talk it over with her when she answered the questions?

A Yes, I did.

Q And do you recall giving this answer or these answers to these questions:

"No. 22. Did you receive a property report before you signed the contract?

"A Yes.

"No. 23. If you received a property report before signing the contract, were you given enough time to read the property report before signing the contract?

"A Not sure."

A Right, like I remember today, not sure.

Q But now you are sure you weren't given enough time, is that right?

A My wife was reading it and I didn't have a chance to read it.

Q On your oath right now, you are sure --

A I'm sure I did not read the report.

Q And you are sure you didn't have time?

A I didn't have no time.

Q And the reason the questionnaire went in that way two years ago is because your wife filled it out, is that it?

A Yes.

Q And not because you have been talking to Mr. Devorkin?

A Not because I was talking to Mr. Devorkin.

Q Okay.

One other question.

Did you testify this morning under oath that you were told at the dinner that the entire Rio Rancho Estates would be developed in five to seven years?

A Yes.

Q And in January 1975, you testified under oath that you received no assurances as to development, isn't that correct?

A I do not remember exactly --

MR. DEVORKIN: What are you referring to, Mr. Fleming?

MR. FLEMING: Page 23:

Q "Q Under oath, were you given any assurance as to when that land would be developed?

"A No. As soon as they finish with sections, they are going to spread more and more to each one section to another."

A This is what was told.

Q Under oath 1975?

A Yeah.

Q And today under oath five to seven years the entire 55,000 or actually 91,000 acres would be developed?

Is that your testimony?

A Yeah.

Q What refreshed your recollection?

A Not a thing.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Seder, the transcript that you had a chance to read, Government's Exhibit 314, is that word for work what was said to you at the first dinner?

THE COURT: Just a second. This document has been allowed in on your representation that it is substantially correct and by substantially correct I mean there are only minor details that may be changed, nothing in a major type of representation.

You are talking about a major type of representation. Now, if that is your point, the exhibit goes out.

You have made that representation at the side bar. I am going to hold you to it.

MR. DEVORKIN: Fine.

Q The paragraph in the contract, which is 141-A, which refers to federal property report and any applicable state offering statements, when you went through and signed the contract that night, did anybody from Rio Rancho sit down and explain to you what those reports were and what those items referred to?

A I do not remember.

Q Did anybody sit down and take you through the report item by item and show you what was in there?

MR. FLEMING: I object, your Honor, that is not a part of this case. I object.

THE COURT: Sustained.

Q When you got the documents referred to in the contract, did you get company brochures at the same time?

A Yes.

MR. FLEMING: Objection, that was covered on direct, if your Honor please.

THE COURT: Sustained.

Don't shake your head. You brought it out on redirect. You don't need to spend time repeating it.

Q You went to a dinner, I believe, after you visited Rio Rancho in May, correct?

A Yes.

Q For what purpose did you go to that dinner?

I wanted to find out if I could get my money back.

MR. DEVORKIN: No further questions.

THE COURT: You may step down. Next witness.

(Witness excused)

MR. ARKIN: Your Honor, before we have the next witness, may we have a brief side bar, if your Honor please?

THE COURT: Yes.

(At the side bar)

THE COURT: Are you finished with this witness?

MR. ARKIN: Finished with the witness, your Honor.

THE COURT: You are excused.

(Witness excused)

MR. ARKIN: Your Honor, I thought it was a clear understanding that the prosecution would ask each of their victim witnesses to bring with them certain documents so that we might use them as we did, for example, with Mrs. Hampe and Mrs. Henry.

Now this witness claims he was not asked to provide those documents or provide any documents.

THE COURT: I am not aware of that agreement that you said you had with the government.

MR. DEVORKIN: I will represent to the Court --

MR. ARKIN: It was on the record, your Honor.

MR. DEVORKIN: I will represent to the Court that we sent a letter out to all count victims asking them to send us certain materials. When Mr. Seder came in a few days ago I asked him if he had anything else. I believe he said he didn't and I called his wife to ask his wife. I think his wife may retain these materials or may be in charge of them.

I asked her to give her husband anything else she had which she had not given us already and she said we had everything she had.

THE COURT: That solves that one.

MS. HYNES: There were also checks in that group of documents that were marked into evidence.

MR. DEVORKIN: I have an application with all due respect to the Court, I have checked the transcript, both Mrs. Hampe and Mrs. Henry, and I had checked it before I asked the questions your Honor so strenuously objected to with Mr. Seder and the first question I asked, which was the one referring to resale, and the second one for that matter, too, the questions I asked Mr. Seder are exactly the questions --

THE COURT: Didn't I rule that out specifically?

MS. HYNES: No, your Honor.

MR. DEVORKIN: Your Honor, I will show you the transcript.

THE COURT: I remember saying there would be no testimony in this case as to whether there was failure to make a representation and that will be in the record.

MR. DEVORKIN: That may be.

MR. ARKIN: That is.

MR. DEVORKIN: Page 211 and 12 of the transcript and page 314 of the transcript we were permitted to ask victim purchasers, I meant no disrespect to the Court before, it was based solely on the questions I had asked before:

"Q Mrs. Hampe, had you known that there was no resale market" not had the defendants represented it to you but had you known there was no resale market value --

THE COURT: The inference is they were not told it. If I ruled that way, I will rule it out from now on.

It is perfectly clear I won't let that in. Stop it, please. When I rule you are finished.

MR. DEVORKIN: Obviously that is true.

THE COURT: Don't pull this stuff of bringing something out about the variance between this transcript and something else. That was admitted on your representation thatnothing substantial was changed and it is very substantial if you are trying to show that this man did not hear something that went to the guts of the transaction.

MR. DEVORKIN: I wasn't trying to show that, your Honor.

THE COURT: Come on, everybody in the courtroom knew you were.

Next witness.

(In open court)

WILLIAM J. FINNEN, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. Finnen, I am going to ask you to keep your voice up so the last juror can hear the answers.

Where do you live?

A 917 Melrose Avenue, Bellmore, Long Island.

Q How old are you ?

A Thirty-eight.

Q Do you have a family?

A I do.

Q How many children are in your family?

A Three children .

Q How old are your children?

A Sixteen, eleven and seven.

Q What do you do for a living?

A I am an elevator mechanics for Dover Elevator Company.

Q Where are they located?

A 243 44th Street, Brooklyn.

Q How long have you been an elevator mechanic?

A Seventeen years.

Q Does your wife work?

A No.

Q What is your educational background?

A Two years of college at night.

Q Did you buy any land at Rio Rancho Estates?

A I did.

Q How much land did you buy?

A I bought an acre at first. Could I diversify?

Q I will take you through each transaction, Mr. Finnen.

A Okay.

Q What was your first contact with Rio Rancho Estates?

You have to keep your voice up so everyone can hear you.

A I am sorry.

Q What was your first contact with Rio Rancho Estates?

A I would say in the early part of 1969.

Q How was that first contact?

A We received an invitation by mail to attend a dinner I believe it was held at the Roosevelt Inn on Hempstead Turnpike in East Meadow.

Q Did you go to that dinner?

A Yes.

Q Who did you attend the dinner with?

A My wife and I.

Q Can you recall what happened when you arrived at the dinner?

A We were warmly welcomed and it so happened that one of the salesmen for Rio Rancho was an ex-Navy buddy of mine and he became my salesman. He sat at the table with us.

Q You were seated at a table?

A That's correct.

Q Was there anybody else beside you, your wife and a salesman at the table with you?

A Not to my knowledge, no.

Q Approximately how many other people were in the room?

A I would say about twenty couples.

Q Do you recall what the format of the dinner party was, can you describe that to the jury,please?

A Yes --

MR. ARKIN: I object to the use of the word "format".

THE COURT: Ask him what happened.

Q What happened at the dinner party that you attended?

A Well, they had like I guess you would call a master of ceremony and he was conducting -- they were selling land actually really. We sat down and they had -- he gave a short speech and then we ate dinner and then they showed us a couple of movies and they had charts showing us the value of the dollar and another chart showing the growth of Albuquerque.

Q You said they had charts showing you the value of the dollar.

Can you describe that in more detail what that chart was?

A Well, I vaguely remember it. It did show what putting a certain amount of money in the bank would do at the end of the year with inflation and it also showed investing in stocks, what it would give you at the end of a year and then it showed you what investing in real estate would give you.

Q Do you recall what the rate of return was on an investment in real estate as compared to the investment in the bank and in the stocks?

A I don't know the exact rate, but it was greater than the other two.

Q It was greater than the other two?

A Yes, that's correct.

MR. ARKIN: Could the witness keep his voice up a little bit.

THE COURT: Keep your voice up.

Q Try to throw your voice out to where I am standing.

A Right.

Q You said there was another chart. What was the other chart?

A That chart showed a picture of Rio Rancho properties with a U and it showed the advancement of Albuquerque with its growth toward Rio Rancho.

It showed on one side I believe it was the Siandia Mountains and on both other sides were federal allocated lands.

Q Was there anything else on that chart that you recall with respect to the growth of Albuquerque?

A Just arrows.

Q And the arrow was pointing where?

A Towards Rio Rancho properties.

Q What did the speaker in the front of the room say with respect to the chart that you have just described that had the arrow pointing to Rio Rancho?

A That Albuquerque was growing in leaps and bounds and that the only way it could grow was towards Rio Rancho.

Q I am going to show you pages 8 and 9 of Government Exhibit 388 in evidence and ask you if you can identify the picture that appears on those pages.

A Yes, that was on the chart.

Q Is this the picture that you saw on the chart?

A That's correct, yes.

Q The language on page 9 of Exhibit 388 in evidence, "A case of supply and demand" was that also on the chart?

A Yes.

MS. HYNES: May I show that to the jury, your Honor?

(Pause)

Q Did you buy land at the dinner that night?

A I did.

Q How much land did you buy?

A One acre in I believe Section 2.

Q In Section 2?

A Section 2, yes.

Q What was the reason for buying land that night?

A For investment, for investment purposes.

Q I am going to show you what has been marked Government Exhibit 107-D and ask if you can identify this.

Does your signature appear on this?

A Yes, it does.

Q Can you identify it?

A Yes, I signed it.

Q What is this?

A That is the first parcel of land I bought at Rio Rancho.

MR. GLENDON: I can't hear him.

A That was the first parcel of land I bought from Rio Rancho.

MS. HYNES: The government will offer Government Exhibit 107-D.

MR. FLEMING: We have no objection .

(Government Exhibit 107-D received

in evidence)

MS. HYNES: May I read a portion of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 107-D in evidence to the jury)

Q When you attended this dinner, did you say it was at Roosevelt Raceway Inn?

A I believe that was the name of it, yes.

Q What was the name of the organization that was holding the dinner, if you recall?

A The AMREP Corporation.

Q Was there a real estate broker involved with that dinner?

A Yes, that was Roth Realty, Long Island.

Q When you purchased the property, was anything said about how long it would be until the property at Rio Rancho was sold out?

A I believe it was three years.

Q Who made that statement?

A The salesman on the stage.

Q The speaker at the front of the room?

A Yes, the speaker.

Q What did you believe would happen after three years?

MR. ARKIN: Objection, your Honor.

THE COURT: Overruled.

A Well, at that time I felt that I would be more in a driver's seat being the owner of the property.

MR. ARKIN: I can't hear that, your Honor.

A I felt at this point that once AMREP sold all their property in Rio Rancho I wouldnow be in the bargaining position of being a property owner.

Q What would you be able to do with that property?

A In this case if the growth was forthcoming, I would be able to get money back from my investment.

Q Did you know how large Rio Rancho was in relation to Albuquerque at the time you purchased that one acre?

A No, I did not.

Q Did there come a time when you visited Rio Rancho?

A I did.

Q Approximately when was that?

A I would say three or four months later.

Q Did you go on the tour with anyone else?

A Yes, with my mother-in-law and father-in-law.

Q Did your mother and father-in-law own property at Rio Rancho?

A Yes, they did.

Q How did they come to own property?

A We had spoke to them about it at home and the salesman, being a friend of mine, came over one weekend and sold them property.

Q Did they buy the property after you and your wife had purchased your original acre?

A That's correct.

Q Was that sale made to your in-laws in your home?

A That's correct.

Q Was that in your presence?

A That's correct.

Q Where was their property located?

A I believe their property was also in section 2. Alongside of ours somewhere.

Q Did your wife accompany you on the tour?

A That's correct, yes.

Q Your in-laws?

A Yes, they did.

Q Can you describe what happened when you went on the tour? How long was the tour?

A I think it was four nights and five days. We arrived at the Albuquerque Airport, we were picked up by two Rio Rancho buses and taken to a downtown motor inn in downtown Albuquerque.

Q What happened for the next few days on that tour?

A After this time we were shown highlights of Albuquerque and its medical facilities and we were shown -- also taken one day to Santa Fe, the capital, and dined, a tour of the city was given to us, and we spent one day at the property.

Q Do you recall what day was set aside for you to go to the property?

MR. ARKIN: Object to the question. It makes sense. What day of what days?

THE COURT: What day he went, the first day, second day or third day?

Q What day did you go to the property?

A I believe it was the day before we left, a Thursday.

Q What happened when you were taken to the property?

A We were taken to the property by Ric Rancho buses and when we got there we were all ushered into a room and given an orientation as to the update of Rio Rancho and what they were doing there.

Q Do you recall who gave that orientation?

A No, I am sorry, I don't.

Q You said that you were transported from the City of Albuquerque to Rio Rancho by bus?

A That's correct.

Q Did the bus make any stop on the way before you had that orientation meeting?

A Just at one point which was like a bluff overlooking the city. We were able to see the city in the background.

Q Did you get out of the bus at that point?

A They wanted to show us the sight, yes.

Q Was anything said to you when you disembarked from the bus and were standing on that bluff?

A They showed us the mountain range and they also showed us the government property which you could see from the spot where we overlooked Albuquerque.

THE COURT: You have to keep your voice up.

Q You said --

A When we got off the bus you could see Albuquerque in the background and they had pointed to the Siandia Mountains and the other properties that were government lands around Albuquerque.

Q Were you told that they were government lands?

A Yes.

Q Were you told anything with respect to the growth of Albuquerque?

A We were told that Albuquerque was growing in leaps and bounds and that the growth was toward Rio Rancho.

Q Then you got back on the bus and were taken to the orientation meeting?

A At a clubhouse, yes.

Q Was this on the property at Rio Rancho?

A That's correct.

Q Then what happened after the orientation meeting?

A Then we were broken down, each couple, in my case it was my mother-in-law, father-in-law, my wife and I were given to a salesman and he in turn would take us out to our property.

Q How did he take you to your property?

A By a private car.

Q So the four of you were in that car with the salesman?

A That's correct.

Q Did the car have a radio?

A Yes, it did.

Q Were you taken to unit 2 as far as you know?

A That's correct, yes.

Q Were you shown your property?

A We were.

MR. FLEMING: Your Honor, could we have a little less leading at this point?

Q What happened when you got to your property?

A When we finally got to section 2, he had showed us approximately where our plot of land was and I remember my mother-in-law complaining about something that her property wasn't facing mine or some nonsense really --

THE COURT: Wait. Slow down and talk loud.

A When we got to the property he had showed us, my wife and I, our plot of land and he had showed my mother-in-law and my father-in-law theirs and my mother-in-law made some complaint about we are not close enough something to that effect and he said don't worry about it, we can straighten it out when the property is built on.

Q What improvements, if any, did you believe the company was going to make to the property that you purchased in unit 2?

A I felt in time that the property would be built as per section 16, I think it was.

Q Was section 16 a developed area?

A That's correct, yes.

Q Were you shown any other property on that day?

A Yes, prior to going back he asked us if we would mind and he would stop and show us something that he thought we might be interested in.

MR. HOFFINGER: We can't hear.

THE COURT: You are talking too fast and too low.

Q Who is the person that you are talking about?

A I guess he was a salesman. The salesman prior to going back to the clubhouse for the buses asked us if we would mind making a stop-off at property he thought we might be interested in looking at. At this time he took us to a ranchette area, which was off the main road.

Q So he took you to what he described as a ranchette?

A That's correct, yes.

Q What happened when you arrived at the ranchette property?

A Well, actually the ranchette property was much closer, I don't recall the name of the main road, it was much closer to the main road than was section 2 and he told us that this was the only property, this property was going to be bought in Albuquerque. Ut would never be on sale out of Albuquerque on this tour and he told us that this investment was far greater than the property in section 2 because of its availability to the main road.

Q How large was the ranchette he was showing?

A Five acres.

Q Did you buy that ranchette?

A That's correct, yes.

Q Can you tell the jury what happened in connection with your buying that ranchette?

A At this point I didn't want to get involved in two parcels of land so I took my -- they let me trade my parcel of land from section 2 and put it into section I think it was 17.

In other words, I only owend actually between us, I only owned it would be two and a half acres apiece.

Q Did you buy this ranchette with anyone else?

A Yes, I did. My mother-in-law and father-in-law.

Q The payments that you had made on your piece of property in unit 2 were transferred to the ranchette that you were buying in unit 17, is that correct?

A That's correct, yes.

THE COURT: Did that include your in-laws transferring their property, too?

THE WITNESS: No.

THE COURT: They kept their property?

THEWITNESS: They kept their property, yes.

Q I am going to show you what has been marked Government's Exhibit 107-E and ask you if your signature appears on that.

A Yes, it does.

Q Do you recognize this?

A Yes.

Q What is it?

A That's a transaction for section 17.

Q Is this the contract for the purchase of the ranchette?

A That's correct.

MS. HYNES: I offer 107-E.

MR. FLEMING: I have no objection. It is hard to read, your Honor, but I have no objection.

XXX (Government's Exhibit 107-E marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read just a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 107-E in evidence to the jury.)

Q Mr. Finnen, are you familiar with the term exchange privilege?

A To me the exchange privilege they offered us was if I were to --

MR. FLEMING: I am sorry, Mr. Finnen. Could we have a response to the question, please? The question was whether he was familiar with the term.

A I am sorry. Yes.

Q What was the exchange privilege as you understood it?

A If we were to move down to Albuquerque, we were permitted to trade a half acre of our property in to land that was already developed with utilities.

Q Did you understand that the exchange privilege also went with the five acre ranchette that you purchased?

MR. FLEMING: Object to the form of that question.

THE COURT: Sustained.

Q What was your understanding with respect to an exchange privilege --

THE COURT: What was he told. Not his understanding.

Q What were you told? Were you told anything -- let me withdraw that.

Were you told anything with respect to an exchange privilege on the ranchette that you bought?

A That would be the same as the property in section 2.

Q Are you still making payments on the ranchette today?

A Yes, we are.

Q Who is actually making those payments today?

A My mother-in-law.

Q Do you contribute to those payments?

A I do.

Q Did there come a time after you returned from the visit to the property when you attended another dinner party?

A Yes. I would say a couple of months after we returned we had a get-together of all the people that were on the trip.

Q Did anyone else go to that party with you?

A Just my mother-in-law and father-in-law.

Q Was property being sold at that party?

A Yes.

Q Did you buy any property at that party?

A No, I did not.

Q Was a sales presentation made at that party?

A Yes.

Q Did there come a time when you attended another party where you did buy land?

A Yes, I would say maybe six months later my sister-in-law and brother were interested and we attended a party at the Salisbury Inn in East Meadow.

Q Was that approximately March of 1970?

A That sounds about right.

Q Did you purchase property at that dinner?

A Yes, we did; one acre.

Q I show you what has been marked Government Exhibit 107-M. Do you recognize this?

A Yes.

Q Is this the contract for that one acre?

A That is.

MS. HYNES: I offer it.

MR. FLEMING: No objection.

MR. ARKIN: No objection.

X (Government's Exhibit 107-M received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of Exhibit 107-M?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 107-M in evidence to the jury.)

THE COURT: We will have a short recess.

(Jury left the courtroom.)

MR. FLEMING: Your Honor, may I take a moment of your time? When we had the side bar after Mr. Seder had testified, when he left he bowed to the jury and made some kind of motion with his hand. I didn't want to raise it in front of the jury. I am sure the government didn't tell him to do it, but they should instruct their witnesses that they should not do that sort of thing.

THE COURT: I didn't see it. I don't know what you are talking about. I am sure the government didn't do it. What do you want them to do?

MR. FLEMING: Caution other victim witnesses.

THE COURT: Not to make any gestures to the jury.

(Recess.)

(Continued on next page.)

(In open court; jury present.)

MS. HYNES: May I proceed, your Honor?

THE COURT: You may proceed.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mr. Finnen,on the payments that you were making on the ranchette, you mentioned that your in-laws were making payments.

What are their names?

A That would be Mr. and Mrs. Delcampe and also on the ranchette my sister-in-law and brother would be involved, which would be a Mr. and Mrs. Caniano.

Q So were their three people making payments on the ranchette?

A That's correct.

Q And it is yourself, your sister-in-law and your mother and father-in-law?

A That's correct.

Q And how are those payments made?

A They are made, I believe, to a bank in New York by envelopes provided by the corporation.

MS. HYNES: Your Honor, at this time I offer Government Exhibit 107-A.

MR. FLEMING: I have no objection.

XXX (Government Exhibit No. 107-A marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from part of 107-A?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 107-A in evidence to the jury.)

Q Mr. Finnen, Government Exhibit 107-A is a payment sheet as of October 15, 1975.

Did you make payments after October 15, 1975?

A Yes, we did.

Q Do you recall how much you paid in on the ranchette yourself, your sister-in-law and your mother and father-in-law, approximately?

A I think it's $10,000.

Q I show you, again, Government Exhibit 107-E, which is the contract for your ranchette, referring to the first page.

Do you see your initials there?

A Yes, I do.

Q And the paragraph 3 reads, "I, we acknowledge receipt of copies of restrictive covenants, the property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban

Development, and any applicable public report, offering statement or prospectus required by state authorities."

Where did you initial this contract? Do you recall where it was initialed?

A In the office when we -- after we bought the property, the man put the portfolio and this was in the portfolio.

Q Was this when you were at the property of Rio Rancho Estates?

A Yes.

Q And when you were given the portfolio, do you recall what was in that portfolip?

A Not offhand.

Q Do you recall whether the property reports that are referred to in this contract were contained in that portfolio?

A I don't recall.

Q Do you recall receiving the property reports and the HUD statement?

A Yes.

Q You did receive it?

A Yes.

Q And did you receive those HUD reports and property statements before or after you signed the contract, if you recall?

A After.

Q And after you received the HUD reports and the offering statements, did you read them at any time?

A Yes, I looked through them, yes.

Q And did you read them from cover to cover?

MR. FLEMING: Objection.

THE COURT: Sustained.

When did you read them?

THE WITNESS: Prior to signing the -- that piece of paper there, I believe, in the land office in Albuquerque.

THE COURT: You read the HUD reports prior to signing?

THE WITNESS: It was -- they gave us a portfolio and part of the portfolio with the HUD reports and the -- I believe so, yeah.

THE COURT: And you read that before you signed the contract?

THE WITNESS: No, no, your Honor. No, the contract was signed first, then it was given to us as a portfolio.

In other words -

THE COURT: I am asking you, when did you read the HUD reports?

THE WITNESS: When we were in Albuquerque.

THE COURT: While you were there?

THE WITNESS: Yes.

THE COURT: All right.

Q You said that you attended a dinner after you came back from the property, you attended a dinner with your sister-in-law and brother, is that correct?

A That's correct,yes.

Q Is this the same sister-in-law and brother who are making payments on the ranchette?

A That's correct.

Q And that dinner, you said, was approximately in March of 1970?

A Yes.

Q And was that dinner also run by Roth Realty?

A That's correct, yes.

Q And you bought an acre of land at that dinner?

A Yes.

Q And who made the payments on that acre of land?

A My wife did.

Q And was that acre of land -- did you buy that with anyone else?

A Yes. We -- we -- my sister-in-law and brother and my wife and I bought it together.

Q Bought the one acre together?

A That's correct, yes.

Q Was there a period of time when your sister-in-law and you were making payments on that acre of land?

A Yes.

Q And did your sister-in-law and brother continue to make payments on that acre of land?

A Yes.

Q And are they still making payments on that today?

A Yes, we are.

Q And are you still contributing to that?

A Yes.

Q Do you know how much, approximately, you have paid into that acre of land?

A No, I don't.

Q When you bought the ranchette when you were at the property, the five acre ranchette, what was your reason for buying that ranchette?

A For a better investment.

Q And when you attended the sales dinner in March of 1970 and purchased an additional lot, what was your reason for the purchase of the additional lot?

A Also for investment.

Q When you attended the dinner in March of 1970, was a sales presentation made?

A That was the last dinner, right?

Q When you bought the acre.

A Yes, yes, it was.

Q How did that sales presentation compare to the presentation you heard when you bought your first acre in unit 2?

A I would say roughly the same, except for an update on the progress of Rio Rancho.

Q And was anything said to you at the dinner that you attended in March of 1970 when you bought another piece of property, was anything said to you about any increased value on your investment?

MR. FLEMING: I have a slight objection, your Honor. By whom?

MS. HYNES: First let me find out what was said.

THE COURT: First we will find out whether anything was said and then we will find out by whom.

Q Was anything said, Mr. Finnen?

A Yes.

Q What was the conversation and tell us who was talking?

A The salesman who was with us at the time had asked if we had owned property and we told him yes, we had owned a ranchette, we had bought that in Albuquerque, and he had gotten out a book and showed us how much more the market -- the property was now worth since the time we bought it.

Q Do you recall what he was referring to in that book? Did you see what he was referring to?

A No, I don't.

Q And did he tell you that the property had increased in value?

A Yes, he had.

MR. FLEMING: Objection.

THE COURT: That is leading.

Objection sustained.

(Continued on next page.)

Q Do you recall the name of the sales person?

A No, I don't.

Q Was it the same sales person who you had at the previous dinner?

A No, it was not.

Q Did there come a time when you had difficulties meeting payments on the land that you purchased at Rio Rancho?

A Yes. About three years after we had purchased the land in Albuquerque, I went on strike for seven months and my sister-in-law had twins and we were in financial difficulty and we tried to sell the property back.

Q And is this the sister-in-law who was contributing to the payments on the ranchette?

A Yes, it is, yes.

Q And did you take any steps in trying to resell your property at that time?

A Yes. We went to Roth Realty, and they informed us that AMREP was not in the resale business, but they had an office set up for resales for Rio Rancho property and they put us on the list.

Q Who did you speak to at Roth Realty? Who did you have that conversation with?

A I don't recall his name.

Q Did he identify himself in any way in terms of his connection with Roth Realty?

A I don't recall.

Q And what -- did he tell you that Roth Realty would resell the property for you?

A That they would resell the property with them getting a commission.

Q With what?

A With them getting the commission.

Q And did you list your property, then, with Roth Realty?

A We did, yes.

Q And did this gentleman at Roth Realty give you any indication as to whether he could sell your property?

A At first he did, yes, right. He said we had valuable land.

Q What did he say? What was that conversation?

A He had -- I think at the time we went to resell we had $6,000 of money in it and we were in dire financial straits, and he had said he thinks he can get our price for it because the property was very worthwhile as a ranchette and it couldn't be bought in New York City and he thought he had a buyer for us.

A week later he called us back and asked us would we accept $3,500 for the property.

Q I am sorry, he asked you what?

A A week later he told us that the deal fell through, he wanted to know if we would accept $3,500 for the property.

Q Did he tell you he had a buyer for you for $3,500?

A He thinks he might be able to get a buyer for that price.

Q What did you say to him?

A No, we felt that we were losing too much money on it.

Q I didn't hear that answer.

A We told him no, we felt we were losing too much money on it.

Q And did you write to the company during this period of time?

A Yes, we did, yes.

Q I am going to show you Government Exhibit 107-J, and ask you if you can recognize that letter (handing).

A Yes.

Q Did you receive that letter?

A We did, yes.

Q I show you Government Exhibit 107-B.

Do you recognize the handwriting in that letter (handing)?

A That's my wife's.

Q I show you Government Exhibit 197-C (handing).

Do you recognize that letter?

A Yes.

Q And did you receive this letter from the company?

A Yes, from Albuquerque.

Q I show you Government Exhibit 107-I (handing).

Do you recognize the handwriting in that letter?

A My sister-in-law.

Q And is this the sister-in-law who purchased the ranchette with you?

A Yes, right.

MS. HYNES: Your Honor, at this time the government would offer 107-J, 107-B, 107-C and 107-I.

MR. ARKIN: With respect to 107-J, we have no objection to that document.

With respect to 107-B, we object on the grounds that it is hearsay, it not being a letter of this gentleman and it is an agent's statement within that particular exception.

THE COURT: Let me see it.

MR. ARKIN: The typed version of it, your Honor.

I am going to make a similar objection to 107-I, so may I show that to you, also?

THE COURT: 107-I you had no objection to.

MR. ARKIN: Excuse me. Is that in?

THE COURT: Yes.

No, I am sorry. The list that was given me only went through -- no, it did go through I. There was no objection to I.

MR. ARKIN: My --

THE COURT: The only objection was B.

MS. CROSS: Your Honor, was that on the list?

THE COURT: What?

Sure it is. Here it is.

MR. ARKIN: If it has been decided, your Honor, then I say no more on it.

MS. HYNES: Your Honor, in connection with 107-B, you really have to look at C in addition to it.

(Pause)

THE COURT: Isn't there a better copy of this letter?

MS. HYNES: Your HOnor, we made a typed copy.

(Pause)

THE COURT: This is Mr. Finnen's --

MR. ARKIN: Sister-in-law, so he says.

THE COURT: It says, "Sincerely, William Finnen," 107-B.

This is Mr. William Finnen, isn't it?

MR. ARKIN: Yes, your Honor.

THE COURT: And 107-B is signed William Finnen.

MR. ARKIN: I believe he testified it was his wife's handwriting, your Honor.

THE COURT: Isn't this your signature?

THE WITNESS: No, it is my wife's handwriting.

THE COURT: Signed your name to this letter?

THE WITNESS: Yes.

THE COURT: I will let 107-B in, 107-C.

Anything else?

MR. ARKIN: 107-I, we have no authenticity objection, as your Honor noted. We did have a hearsay objection.

THE COURT: Let me see it.

(Pause)

THE COURT: 107-B and 107-C are admitted.

(Government's Exhibits 107-B and 107-C, respectively, received in evidence)

THE COURT: What is your objection to this?

MR. ARKIN: That it is a hearsay objection on B, your Honor. That is the handwritten note.

Or I, excuse me. That's I.

THE COURT: I don't know whose it is.

MR. ARKIN: It appears to have Delcampe-Finnen at the bottom.

THE COURT: Yes.

MR. ARKIN: I don't know whose it is.

MS. HYNES: The witness has identified it as her sister-in-law.

Your Honor, with respect to the hearsay objection, it is offered to show notice to the company.

THE COURT: You say this is your sister-in-law's handwriting?

THE WITNESS: That's right, Caniano, yes.

THE COURT: Objection overruled.

(Government Exhibit 107-J received in evidence)

(Government Exhibit 107-I received in evidence) a pm

MS. HYNES: Thank you, your Honor.

Your Honor, may I read portions of these exhibits, please.

(Ms. Hynes read from Government Exhibit 107-J, 107-B, 107-C, 107-I in evidence to the jury)

BY MS. HYNES:

Q Mr. Finnen, from time to time did you receive moratoriums on your payments on your land at Rio Rancho Estates?

A The only moratorium we received was when I was on strike and we couldn't make the payments. They had told us they would foreclose on the land on us.

Q Did they give you a moratorium?

A They had given me a ninety day extension, yes.

Q When was this?

A While I was on strike?

THE COURT: When?

Q Can you give the jury a date?

THE COURT: Wait. The question is when. There is no answer from this witness.

Do you know the date?

MS. HYNES: I asked him to give the jury the date, your Honor.

A It would be in July, I guess, of 1972, in the vicinity of that.

Q Did you continue to list your property with Roth Realty?

A Yes, I did.

Q Were you able to resell your property?

A No, I haven't been able to resell it.

Q Did there come a time when you visited Albuquerque again?

A Yes, two years ago on my own.

Q What year was that?

A About 1974.

Q Approximately when in 1974 did you visit Albuquerque?

A I believe in August.

Q Can you describe the circumstances of your visit to Albuquerque at that time?

A Yes. The corporation I worked for had an opening in Santa Fe, New Mexico and having been to Albuquerque previously, we liked the climate and we went down to explore the possibilities --

MR. FLEMING: I am sorry.

A The corporation I worked for had an opening in Santa Fe, which is above Albuquerque, and having liked the climate in Albuquerque we were going to explore the possibility of moving to Santa Fe.

Q Did you take a company guided tour when you went in 1974?

A No.

MR. ARKIN: Are you referring to the company he was working for?

A Yes, my company, Dover Company.

Q Did you take an AMREP or Rio Rancho tour when you visited Albuquerque in 1974?

A No.

Q How did you go to Albuquerque at that time?

A By a private car.

Q What did you do when you got to Albuquerque?

A Well, we toured the sites with the children and we also looked into Rio Rancho to see how much was actually done on the property.

MR. ARKIN: Your Honor, I am sorry. I didn't catch that.

A We toured Albuquerque and we went to Rio Rancho to see how much was actually done on the property.

Q Before you left New York to go to Albuquerque in 1974, did you get in touch with AMREP or Rio Rancho for any reason?

A Yes, we did. There was a possibility that with the job in Santa Fe I could live in Albuquerque and I wanted to see what the housing situation was in Rio Rancho and we contacted ahousing salesman, I don't recall his name, but he was from Brooklyn, and he sent me out all the details and up-to-date prices on the homes and also a binder for $100 to hold a home at the price at the present level.

Q Did you send him a binder?

A I did, yes.

Q How much was the binder that you sent him?

A $100.

Q The purpose of that binder was what?

A To hold the house at the present price.

Q When you went down to Albuquerque where did you stay?

A We stayed in a motel just outside off Center Avenue, which is as you come in to Albuquerque proper.

Q Did you visit various parts of Albuquerque while you were there?

A Yes.

Q What was the reason for visiting those various parts of Albuquerque?

A At this point for possible relocation to the area.

Q Did you also visit Rio Rancho Estates?

A Yes, we did.

Q Did you get in touch with anyone on the property at Rio Rancho Estates?

A No, we did not.

Q Did you visit the property on your own then?

A Yes, we did, yes.

Q What portion of the property did you visit at that time?

A Well, since we had been on the toru, there was now a section to the east of the main road that was new and we went through there and we also toured the old section where we had been previously.

Q When you say the old section, are you talking about the developed sections?

A That's correct, yes.

Q What did you see as you toured the old section and the new section?

A Well, first of all, the parcels of land property wise in the new section were smaller than the property on the old section and I would say if there were ten houses on a block, five of them were for sale.

Q I didn't hear that.

A If there were ten homes on a block, five of them were for sale, with "For Sale" signs on them.

Q Are you referring now to the new section?

A Both sections.

Q Both sections?

A Yes.

Q Did you visit any residential areas in Albuquerque on that trip?

A Yes, we did.

Q Will you describe that, please.

A I would say in general the areas that were built were much more open and much more freer. In other words, I guess they were built on an acre plot and they were just outside of Albuquerque, I would say five minutes from downtown.

Q Can you pinpoint what areas of Albuquerque you were looking at homes?

A North -- I would say in the general area of the Siandia peak tram.

THE COURT: The what?

THE WITNESS: The Siandia peak tram. There is a tram there.

Q Was that --

A This would be I guess the northeast.

MR. HOFFINGER: Your Honor, we cannot hear a word the witness is saying.

THE COURT: You must keep your voice up and you must talk slower. There are twenty people that have to hear you back there plus eighteen jurors.

Q Where is the Siandia peak tram?

A I would say in the northeast corner of Albuquerque.

Q Did you visit any other sections of Albuquerque other than the northeast section?

A Yes, we also looked into the northwest and the south corners of Albuquerque.

Q Will you describe what you saw there?

A I would say --

MR. ARKIN: Where, if your Honor please. He has mentioned several sections.

THE COURT: Where?

Q Let's take one section at a time. You said you visited the northwest section of Albuquerque.

A That's correct. That would be below Rio Rancho.

Q What did you see there?

A I would say homes built on the basis of Levitto

I don't know if I can use that, Levittown, Long Island, but the properties were larger and in general the home prices were basically the same as they were in Rio Rancho.

Q These are the homes in the other sections?

A That's correct, yes.

Q Did you make any decision with respect to where you would relocate in Albuquerque if you got the job offer?

MR. ARKIN: Your Honor, objection.

THE COURT: Sustained.

Q Did you make any determination with respect to relocating to Rio Rancho?

A Having seen the property and all the for sale signs, we immediately felt we couldn't live in Rio Rancho.

Q How did the location of the homes at Rio Rancho compare with the location of the homes that you visited in other parts of Albuquerque?

MR. ARKIN: Objection, your Honor, it is a meaningless question.

THE COURT: Sustained.

Q How did the location of the homes that you visited in the parts of Albuquerque that you have described compare with the location of Rio Rancho Estates?

MR. ARKIN: Same objection, your Honor.

THE COURT: I don't know what you mean compare with the location.

MS. HYNES: I am sorry, your Honor. I will clarify it, I hope.

Q How did the location of the homes that you visited -- the areas that you visited compare in reference to Albuquerque with the homes at Rio Rancho Estates?

THE COURT: You mean distance-wise?

MS. HYNES: Yes, your Honor.

THE COURT: All right.

MR. ARKIN: If your Honor please, I have an objection on the grounds that it calls for any particular number of homes he may have seen. The question could call for many answers.

MS. HYNES: I will take it one section at a time, your Honor.

MR. ARKIN: How about one house at a time?

THE COURT: We will take one section at a time.

Q Let's start, Mr. Finnen, with the northeast section.

A Now we are talking five minutes away from downtown Albuquerque, is that what we are speaking of?

THE COURT: You are the one that's telling us. We have never been there.

A The homes that we looked at are on the outskirts of Albuquerque were all five or ten minutes from downtown proper.

Q What about --

THE COURT: When you say on the outskirts of Albuquerque, what are the outskirts of Albuquerque? North, south, east, west?

THE WITNESS: I would say within five or ten minutes' ride from Albuquerque downtown, that would be what I am speaking of.

THE COURT: In circumference from any place?

THE WITNESS: Right.

THE COURT: All right.

Q What about the homes at Rio Rancho Estates?

A Rio Rancho I would say is about 20 to 30 minutes away from downtown Albuquerque.

Q When you were on the tour, the company tour in 1969, were you shown these other areas that you just spoke about?

A No.

Q When you were in Albuquerque did you -- this is in 1974 -- did you try to list your property with a local real estate broker?

A No, we did not.

Q Did you make any inquiries concerning the resale of your property?

A I had called the gentlemen we were doing business with about the homes and asked him if he could help us out with resale and he said he was sorry, he was strictly in home sales and had nothing to do with resale.

Q Was this the gentleman connected with Rio Rancho Estates?

A That's correct, yes.

Q Mr. Finnen, if anyone connected with Rio Rancho had told you at the time you purchased any of your pieces of property that the company had commissioned its own report about the growth of Albuquerque and that the report said that Albuquerque's growth would be to the northeast and would have no effect on Rio Rancho for at least 20 years, would you have bought the property?

MR. ARKIN: Objection, your Honor. There is no foundation for this question.

THE COURT: I gather it is subject to connection? I have heard so much about this report I am sure it is going to pop up sooner or later and if such a report was commissioned by the defendants, the question is proper.

MR. ARKIN: If your Honor please, there are lots of reports in this case and the question really is one which I will say first is misleading and with no foundation. What is in this man's mind or went into his decision making process or should go into that process and this is not one of those things.

THE COURT: Overruled.

MS. HYNES: I represent the government will connect that report up, your Honor.

Q Mr. Finnen, you can answer the question.

A Could you please repeat it?

MS. HYNES: Could the court reporter please read back the question.

(Record read back.)

A No.

MS. HYNES: Your Honor, I have no further questions of this witness.

THE COURT: You may cross examine.

CROSS EXAMINATION

XXX

BY MR. FLEMING:

Q Mr. Finnen, my name is Fleming. This trip in 1974 was to explore the possibility of relocation to a job in Santa Fe?

A That's correct.

Q Santa Fe is west of Albuquerque?

A To my recollection north of Albuquerque.

Q North of Albuquerque. Now, if you were going to work in Santa Fe, why did you want to live as close to Albuquerque as possible?

A Repeat that, please?

THE COURT: Read it back.

(Record read back.)

A Because my wife liked the atmosphere in Albuquerque.

Q Apparently you explored home sites closer into metropolitan Albuquerque than Rio Rancho?

A That's correct.

Q Was it your desire to live as close to the city, that is the city central of Albuquerque as possible if you lived in Albuquerque?

A No.

Q When you went to Albuquerque in 1974, did you return to the bluff where the bus had stopped on your visitation in 1969?

A No, we did not.

Q When you were in Albuquerque in 1974, was the highway to Rio Rancho four laned and paved?

A I don't recall.

Q Do you recall if it was four laned and paved in 1969?

A It was paved. I don't know if it was four lanes or not.

Q You have no recollection of what it was in 1974?

A It was paved. I don't know how many lanes it was, though.

Q Was there a shopping center there in 1974?

A Yes.

Q The office building?

A No, I didn't see it.

Q The golf course?

A Yes.

Q Was there a difference in Rio Rancho in 1974 from what you had observed in 1969?

A In reference to what?

Q Had it gotten bigger?

A Yes.

Q In 1974 did you see the new high school approximately two miles down the road from Rio Rancho?

A No, I did not.

Q Between 1969 and 1974, did you see two high school between Albuquerque and Rio Rancho?

A On the one bus tour we seen one high school.

Q When you went back in 1974, did you see a second high school about two miles down the road from Rio Rancho to Albuquerque?

A No, we did not.

Q Now, do you still own all of your property?

A Yes, I do.

Q So I take it Rio Rancho has never foreclosed on your property?

A No, my mother-in-law helped us pay for it.

Q My question is you were not foreclosed?

A That's right.

Q You testified they gave you a moratorium of 90 days in July of 1972?

A I believe so, yes.

Q Did they also give you a moratorium in September of 1971?

A Yes, I think it was, yes.

Q That was for 60 days or 90 days?

A I don't recall.

Q Did they give you any other moratoriums?

A I don't recall.

Q Exhibit 107-B, is that the one that's signed by your wife, your name signed by your wife?

A That's correct.

Q This is a copy of that, did the government show you that and you compared it with the handwriting?

A Yes, sir.

Q It says your wife wrote it seems we are fighting a losing battle or is that the point, a way of making more money from people who miss a few payments. Did she so write?

A Yes.

Q Did Rio Rancho make more money from you by reason of your missing some payments?

A We still have to pay it again, right.

Q You contracted to pay a certain amount of money?

A That's correct, yes.

Q My question is did AMREP or Rio Rancho make more money from you or your relatives as a result of you missing a few payments?

A No.

Q In fact, they gave you moratoriums?

A That's right.

(Continued on next page.)

Q In January 1969, you purchased one acre, and the contract for that or a copy of that contract is 107-D, is that correct, Mr. Finnen?

A Correct, yes.

Q And you have initialed that you acknowledge receipt of a copy of the restrictive covenants and the public report, offering statement or prospectus applicable to the lots?

A Yes.

Q Of course, the refund guarantee is set out there?

A Yes.

Q And on the back, am I correct this was a residential lot?

A That's correct, yes.

Q And it provides for an exchange privilege in Paragraph 3, is that correct?

A Yes.

Q And you understood that when you bought it?

A Yes.

Q Then you went down to Albuquerque and you -- am I correct, and correct me if I am wrong -- you exchanged this acre for a ranchette?

A Part of it, yes.

Q Part of a ranchette?

A That's correct, yes.

Q And you signed another contract, which is 107-E, and that is dated June 27, 1969.

Is that the one covering the ranchette?

A Yes.

Q Did you testify that the salesman told you that there was an exchange privilege with the ranchette?

A I believe the exchange privilege would be the same as on this property here (indicating).

Q No, I am sorry.

My question is, did you testify that the salesman -- I will withdraw that.

You were taken around the property in a car?

A That's correct, yes.

Q And it was you and Mrs. Finnen?

A Yes.

Q And your --

A Mother-in-law and father-in-law.

Q Mrs. Finnen --

A Delcampe. I'm sorry.

Q You and Mrs. Finnen and your mother-in-law and father-in-law were taken around by a salesman, and did you testify that the salesman told you there was an exchange privilege with the ranchette?

A Yes, right.

Q You did so testify?

A Right.

Q Am I correct that the contract on the ranchette does not provide anything with regard to exchange privilege?

A How about this No. 3 here?

Q What is the date on this, do you see?

That is the exchange privilege you were talking about?

A Yes.

MR. FLEMING: May I read to the jury, your Honor?

Q This is what the salesman told you you had?

A Yes, correct.

MR. FLEMING: It reads, "Buyer shall have the right to exchange property described herein at any time during six months after date of purchase agreement for any other available property with all monies paid in being applied toward the new property."

Q That is not an exchange privilege for a building lot?

A It does not say that, no.

Q You signed two of these contracts for residentia

THE COURT: I think to put it in context --

MR. FLEMING: Maybe your Honor can do it.

THE COURT: On your direct examination, by your answers, you gave the impression that the salesman said you had the same exchange privileges with the ranchette as you had with the other one acre.

THE WITNESS: That is correct, your Honor.

THE COURT: The other one acre you could transfer for abuilding lot and it said so in the contract.

THE WITNESS: My other one acre --

THE COURT: Wait.

THE WITNESS: I am sorry.

THE COURT: Isn't that true?

THE WITNESS: Yes.

THE COURT: The contract you signed for the ranchette, by your own admission, does not say you can transfer it to a building lot, only any other property, doesn't it?

THE WITNESS: I don't follow.

THE COURT: Why don't you show him the first provision and the second.

Q You signed -- excuse me, Mr. Finnen, but you signed two contracts purchasing residential acreage, each for one acre a piece, am I right?

A That's correct, yes.

Q And on the back of each, the first one dated January 17, 1969, in Paragraph 3, states, "Buyer shall have the right to exchange property described herein at any time during the next five years after date of this purchase agreement for any other available property of equal value at no increase in price whatever," is that right?

A Yes.

Q And am I correct that that is basically what this rider says on the ranchette?

A That's correct, yes.

Q All right.

But what the residential contract also says, am I correct, two sentences down,

"If, when buyer is ready to build a home for himself, utilities have not reached his site, seller will exchange a one-half acre lot in area serviced by utilities for the same size lot of buyer"?

That is in the residential contract, is it not?

A Yes, right.

Q And you knew that when you bought it?

A That's correct, yeah.

Q And that is not in the ranchette contract, is it?

A We had asked that they had --

Q No. The question is, is it in the ranchette --

A No, it is not.

Q All right.

When you read the ranchette contract, did you see, "There is no exchange right for a building lot in this contract"?

A No, I did not, no. I assumed they were the same.

Q The March 22, 1970 contract, when you bought an additional acre, says, in Paragraph 3:

"If when buyer is ready to build a home, utilities have not yet reached his site, seller will exchange building lot of comparable value in area serviced by utilities, for a single lot of buyer," is that correct?

A That's correct.

Q And you read that and understood it?

A Yes.

Q In fact, there was a representation in the film as to residential property?

A Right.

Q An exchange right for the right to build?

A Yes.

THE COURT: I suggest we suspend for the day and resume tomorrow morning at 10:00 o'clock, please.

(Judge and Jury left the courtroom)

(In open court - in the absence of the Judge and jury)

MR. DEVORKIN: 3519-A, Federal Trade Commission interview report dated December 3, 1975 with Martin Linderman. That name is actually incorrect. It is Morton Lederman.

3519-B is a note from the desk of Lederman and a presentation.

3519-C is a presentation with Lederman written at the top.

3519-D is a presentation with Lederman and draft No. 2 written at the top.

MR. LAVINSKY: Yes, that is handwritten.

MR. DEVORKIN: 3519-E is entitled "ATC Presentation, March, 1975".

3519-F has handwritten "Lederman," printed, "Draft No. 2, 8/6/74, fly and buy script."

3519-G has handwritten Lederman, "Draft No. 3, 8/9/74, Rio Rancho Fly and Buy Script".

3519-H is a memo October 18, 1974 from Leonard Geller.

MR. LAVINSKY: That is "To All Managers," right?

MR. DEVORKIN: 3519-E is dated January 10, 1975, "To All Managers, from: Leonard Geller, Subject: ATC Presentation."

That was all given out at the end of court today.

MR. LAVINSKY: Mr. Devorkin, in the pile that I received, I don't seem to have 3519-C. I assume you have another copy.

MR. DEVORKIN: 3519-C was given out, but I will give you a copy. I believe everybody else got a copy.

(Pause)

MR. DEVORKIN: C was given to Mr. Fleming and Mr. Lavinsky, and I will give it to everybody else tomorrow morning.

Yesterday, after court, the defendants were handed copies of the following 3500 material:

3514-A, a note from Mrs. Eleanor DeWitt, stamped received December 12, 1975, Los Angeles office, dated 12/5.

3514-B, a letter from Mrs. DeWitt to the Federal Trade Commission stamped "Received April 22, 1975, Los Angeles office."

3514-C, a note from Mrs. DeWitt to the United States Attorney's Office, Southern District of New York, stamped "Received November 7, 1975."

At the bottom is the outside of the envelope sending that note.

3514-D is a questionnaire noted "Post Indictment" from Eleanor P. DeWitt.

3514-E, a note from Eleanor P. DeWitt to Michae S. Devorkin.

3514-F, letter dated March 10, 1971 from Mrs. DeWitt to Rio Rancho Estates, Inc.

3514-G, note from Eleanor DeWitt to Rio Rancho Estates, dated 12/2/74.

3514-H is from Eleanor DeWitt to Rio Rancho Estates, dated 5/21/72.

3514-I, note from Eleanor DeWitt to the Mack ATC Realty Corporation, dated 1/4/71.

3514-J, note from Eleanor DeWitt to Rio Rancho, dated 2/4/76.

3514-K, note from Eleanor DeWitt to Rio Rancho, dated some month, 7th day of '76.

MR. LAVINSKY: The month is really illegible.

MR. DEVORKIN: All right. I am finished.

MS. HYNES: May the record reflect that the government turned over as 3500 material for Ann Greenberg, documents numbered 3520-A through 3520-AAAA.

That material was turned over last evening.

May the record further reflect that the government turned over as 3500 material for David Jones a single letter numbered 3516 to a Mr. Cummings, signed by David Jones.

The government has further turned over as 3500 material and marked as 3513 document Government's Exhibits 107-I for identification and a handwritten letter dated September 14, 1973 from Delcampe, Caniano and Finnen.

(Adjournment taken to Wednesday, November 17, 1976, at 10:00 o'clock a.m.)

day

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Otto Steve Bondy (Resumed)			1368	1375
Allen Seder	1385	1423	1459	
William J. Finnen	1464	1513		

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UNITED STATES OF AMERICA

v. 76 Cr. 644

AMREP CORPORATION, et al.

November 17, 1976
10:00 a.m.

oOo

(In the robing room.)

THE COURT: Yes.

MR. RUBINO: Your Honor, I have a very brief application only with respect to Mr. Oberman being excused tomorrow.

THE COURT: Yes, Mr. Oberman.

MR. RUBINO: Mr. Oberman if you recall last week looked for an apartment. They have found one and they are moving tomorrow. May he be excused for the day to effect the moving?

THE COURT: You so request this, Mr. Oberman?

DEFENDANT OBERMAN: Yes.

THE COURT: You are absenting yourself just for tomorrow for that purpose?

DEFENDANT OBERMAN: That's correct.

THE COURT: Mr. Rubino will be here and representing your interests and that is all right with you?

DEFENDANT OBERMAN: Yes.

MR. RUBINO: Your Honor, I am leaving at a quarter to four and Mr. Arkin is covering me for the brief period I will be gone.

We have your consent.

DEFENDANT OBERMAN: Yes.

MR. DEVORKIN: The government has an application based on a memorandum that we gave to your Honor this morning shortly after 9:00 and I served counsel for the defendants with a copy of it. The application basically is that I think there was a misunderstanding yesterday in terms of the testimony of Mr. Seder. As we set forth in our memorandum the questions that were put to Mr. Seder, particularly the two questions that your Honor -- one question that your Honor stated had been previously excluded by your Honor, as I indicated at the time, your Honor had previously not excluded that question, in fact, had overruled the defense objection to that very question. It was based upon your Honor's previous ruling that the government was permitted to ask such a question of a consumer witness that I proceeded to ask the question of Mr. Seder that your Honor objected to yesterday.

I think in the colloquy between counsel in front of the jury about that question, the jury could easily get the impression that, in fact, the government did violate a past ruling of the court with respect to that question and the government intended to violate the past ruling with respect to that question and that the court believed the government had intended to violate a past ruling.

I think none of those are the case, as we clearly set forth in our memorandum, and I think that the government should have an instruction at this time, as we have indicated at the top of page 2 of the memorandum, in essence that the court doesn't believe that the government intended to or did violate a prior ruling of the court and that the discussion between court and counsel over such testimony was a legal matter about which the jury should not concern itself and from which the jury should draw no inference.

Furthermore, we believe that the jury should be given the standard instruction about objections and statements of the attorneys and rulings of the court.

THE COURT: Application denied.

MS. HYNES: Your Honor, can I have just one further applcation in connection with the last item that

Mr. Devorkin raised.

Early in the case, I think it was maybe even before openings or right before the time of the openings, Mr. Fleming made an application to your Honor to instruct the jury that anything that counsel said to the jury was not evidence. Your Honor denied that application.

We have now been on trial since November 5th. There have been statements that have been made by counsel, sometimes in the heat of the colloquy that goes on in the courtroom, but nonetheless statements that have been made, for example, Mr. Fleming during the examination of one of the government's witnesses stood up and objected and said, in connection with the property reports, that's not a part of this case.

The fact is that the property reports do play a part in this case and I am sure that Mr. Fleming didn't mean to incorrectly state a fact to the jury but nonetheless it is stated to the jury and at this point two weeks into the trial the jury has not had the benefit of an instruction that anything that counsel says is not evidence and that anything that the court says is not evidence.

I think the jury should have that instruction from the court.

THE COURT. I never give it and I am not going to give it here.

MR. DEVORKIN: May we have just a moment, if your Honor please.

(Pause.)

MS. HYNES: Your Honor, one other item occurs to me. We are calling and have on our witness list a sales person by the name of Nicholas Masone. Mr. Masone has a prior conviction for bookmaking in 1953.

At the time he was 24 years old. He is now, I thik, 48 or 47, something like that.

The government will put Mr. Masone on the stand. Now, in view of your Honor's ruling in connection with Mr. Oberman --

MR. RUBINO: We won't use it.

MS. HYNES: The government will bring it out on its direct case unless the court rules that it cannot be brought out on cross examination.

THE COURT: The defendants have just answered you.

MR. FLEMING: We won't bring it out.

MR. ARKIN: We won't use it.

THE COURT: All right.

(In open court; jury present.)

XXX WILLIAM J. FINNEN, resumed.

THE COURT: Good morning.

XXX CROSS EXAMINATION (Continued)

BY MR. FLEMING:

Q Mr. Finnen, January 17, 1969 you purchased one acre, is that correct?

A That's correct.

Q And you initialed that you had received a copy of the public report offering statement or prospectus applicable to the lot?

A That's correct.

Q You then made your visit to Rio Rancho?

A That's correct.

Q And your mother and father-in-law went with you together with your wife?

A That's correct.

Q Your mother and father-in-law also had purchased how much, an acre?

A An acre, yes.

Q Did you receive a vacation allowance -- I mean a travel allowance on that trip?

A Yes, we did.

Q Did you also when you purchased the one acre receive the insurance policy in case of the death of the breadwinner?

A Yes, we did.

Q Now, you visited your property at Rio Rancho?

A Yes, we did.

Q Do you recall yesterday testifying at page 1475, Ms. Hynes, that you were shown your property you believed the day before you left Albuquerque?

A Yes. To the best of my knowledge.

Q Excuse me?

A To the best of my knowledge, yes.

MR. FLEMING: May I have this marked, please.

XXX (Defendant Chester Carity and Daniel Friedman Exhibit AI marked for identification.)

Q Mr. Finnen, let me show you Defendant's Exhibit AI and ask you if you recognize this document that you produced.

A Yes.

Q Is this the schedule of your trip to Albuquerque after you had purchased your first acre?

A Yes.

MR. FLEMING: I offer it, your Honor.

MS. HYNES: No objection.

XXX (Defendant Chester Carity and Daniel Friedman Exhibit AI received in evidence.)

Q This shows that you arrived in Albuquerque on the afternoon of Wednesday, June 25, 1969?

A Right.

Q And it shows that you left Albuquerque on Sunday at 9:30 a.m.?

A That's correct.

Q Does it also show that your tour of Rio Rancho Estates was on Friday?

A Yes.

Q So it was actually two days before you left?

A That's correct.

Q You left Sunday morning and you visited the property Friday?

A All day Friday, yes.

(Continued on next page.)

Q This shows free time from 5:00 to 7:00 on Wednesday?

A That's correct.

Q It shows free time from 4:00 to 7:00 on Thursday?

A Right.

Q It shows free time 4:30 to 7:00 on Friday?

A That's correct.

Q Free time 5:30 to 7:00 on Saturday?

A That's correct.

Q On Thursday, those three hours, 4 to 7:00 on Thursday, did you visit any real estate brokers in Albuquerque?

A No, I did not.

Q In any event, you saw your property on a Friday.

You testified that your mother-in-law, I believe, had some objection or concern about the acre she had purchased?

A That's correct, yes.

Q That it was too far from the developed area?

A No. She had in question the facing of her home versus ours.

In other words, if they were to build a home there, which way hers was facing in reference to ours.

Q I see.

And was it on that Friday that you exchanged the acre you had purchased for the ranchette lot?

A That's correct.

Q And your in-laws kept their acre?

A That's correct.

Q That was in June of 1969.

Then on March 22, 1970, about nine months later, you purchased another acre?

A That's correct.

Q After having seen the property?

A That's correct.

Q Did you not, in fact, purchase that additional acre with a view towards ultimately moving to Albuquerque?

A No, strictly for investment.

Q Strictly for investment?

A That's correct.

XXX (Defendants Chester Carity and Daniel Friedman Exhibit AJ marked for identification.)

Q I show you AJ for identification, and ask you if you recognize it as a letter which you received (handing).

A Yes.

MR. FLEMING: I offer it.

MS. HYNES: No objection.

XX

(Defendants Chester Carity and Daniel Friedman Exhibit AJ marked for identification received in evidence.)

MR. FLEMING: May I have these marked, please?

(Pause.)

Q This letter is dated September 27, 1973, and it is addressed to you in Bellmore, New York, and it is signed by Mrs. Donna Layton, account executive, and it is on Rio Rancho letterhead.

It says, "Dear Mr. Finnen:

"Thank you for your letter of recent date regarding your account with us. Our model homes brochure is in the process of being revised and you will receive that information when it is completed.

"In reference to job opportunities, I suggest that you contact the New Mexico State Employment Bureau, 505 Market, Northwest Albuquerque, New Mexico."

TDen it goes on, "In the past year, Rio Rancho has undergone rapid development," et cetera.

Did you write --

A Yes, we did.

Q -- to Rio Rancho in 1973?

A Yes, we did, that's correct.

Q And inquire about building a house out there?

A No, about prices of homes and, you know, how much it would cost us.

Q And inquiring about job opportunities in the area?

A Yes, we did.

Q And did that not indicate an interest on your part in possibly going to Albuquerque, living at Rio Rancho and working in the area?

A All we were interested in at that time was moving to Albuquerque. Being we had the property there, we looked into it, of course.

Q But you did indicate an interest on your part prior to September 27, 1973 in moving to Albuquerque?

A Yes.

Q And building a home at Rio Rancho?

A No.

XXX (Defendants Chester Carity and Daniel Friedman Exhibits AK and AL marked for identification.)

THE COURT: Let me see that Exhibit AJ.

You may proceed.

Q I show you AK and AL.

Are those brochures on homes at Rio Rancho which you received?

A Yes, yes.

MR. FLEMING: I offer it.

MS. HYNES: I have no objection.

XX (Defendants Chester Carity and Daniel Friedman Exhibits AK and AL, respectively, marked for identification received in evidence.)

Q Do I understand you correctly, Mr. Finnen, that although you wrote Rio Rancho for information on homes and job opportunities and received these brochures in return, in 1973, you had no interest in living at Rio Rancho?

A We -- we explored the possibility, yes. I didn't say no interest before. I said the object was to go to Albuquerque.

Q I see. All right.

MR. FLEMING: May I have just one moment, your Honor?

(Pause.)

MR. FLEMING: I have nothing further, your Honor.

CROSS EXAMINATION

BY MR. ARKIN:

Q Mr. Finne, you testified yesterday that when you toured the Rio Rancho property in 1975, that you observed --

A '74.

Q '74, excuse me, sir.

That you observed that about one half of the homes there built were for sale, is that right?

A Yeah, I would say that, in my estimation.

Q About five out of ten, you said?

A I would estimate about that, yes.

Q You saw for sale signs on half of the houses at Rio Rancho at that time?

A I indicated half the houses on each block, roughly, I would say.

Q Half the houses on each block?

A Yes.

Q And you are saying here that's a fair estimate on your part, right?

A I feel -- in my viewpoint, yes.

Q Do you know this is a criminal case?

MS. HYNES: Objection, your Honor.

THE COURT: Sustained.

Q You are saying as a matter of your oath that half of the houses at Rio Rancho were for sale?

A No, I did not say that.

I said yesterday that on touring both sections of Rio Rancho that was established, I would estimate about, out of ten homes, five were for sale on each block.

Q And you went through each of the streets at Rio Rancho?

A I didn't go through every street for street.

Q How many streets did you go through?

A I would say we spent about 20 minutes in each section.

Q Do you know how many streets each section has?

A I do not know, no.

Q When you say each section, are you talking about what?

A There is a section I had been down in '69, section 16, and in '74 there was a section to the east which I never seen before.

Q That was Corrales Heights?

A I believe so, yes.

Q You didn't go into Panorama Heights, I take it?

A No, I didn't, no.

Q And you didn't go into unit 11?

A I don't know where unit 11 is.

Q You didn't go into unit 7?

A I don't know where unit 7 is.

Q But you went into one area which you now know is called Corrales Heights?

A That's correct, yes.

Q About how many homes did you see there, your estimate?

A How do you mean as to see? To view the models or --

Q Fine. Let's take how many model homes did you see.

A Three.

Q All the model homes were for sale, weren't they?

A That's correct.

Q Those were homes which were built to show the people to be sold, is that correct?

A That's correct.

Q Those weren't homes which somebody who bought it previously were trying to sell, am I right about that?

A That's correct, yes.

Q When you say half of the homes were for sale, did you include the model homes?

A No.

Q Half of the homes were the homes that people were living in?

A Yes.

Q You went to Corrales. Would you make any estimate how many homes totally were there?

A I can't, really.

Q Can you tell me how many streets?

A I don't really know. I say maybe 40. I really don't know.

Q Do you know how many streets you traveled upon?

A We spent about -- all I can tell you, we spent about 20 minutes in each section.

Q Do you know what the dimensions of the Corrales Heights area are?

A No, I don't.

Q If I were to tell you, Mr. Finnen, in this proceeding, that something like 7 to 8 per cent of the homes in Corrales and in unit 16, a figure which most real estate people will tell you is ordinary and usual, were for sale and no more, that would surprise you, sir?

A Yes, it would.

Q Based on your 20 minute inspection?

A From what I had seen, yes.

Q And you don't even remember how many streets you covered.

Now, you testified that after your first trip out to Rio Rancho that you had transferred a portion of your property and then together with your in-laws purchased a ranchette, am I correct?

A That's correct. There were three parties involved.

Q By ranchette, what do you think a ranchette means, the word?

A Well --

THE COURT: Not what he thinks, but what it meant when he bought the property as used by the defendants here.

Q What does the word or term ranchette mean to you just generally, any time?

THE COURT: I think that is immaterial. It's what it meant here.

We learned that ranchette had a definite meaning in the sale of property at Rio Rancho. It has been defined by some of the witnesses.

Q Well, was a ranchette several acres? Correct?

A It was five acres, yes.

Q A ranchette was a place where you would be allowed to keep horses, is that correct?

A That's correct, yes.

Q A ranchette was supposed to be a little ranch?

A Basically speaking, yes.

Q You don't find little ranches in Queens or Brooklyn or places like that, do you?

A No, not really.

Q So when you are buying a little ranch, that means you can have horses and that kind of a thing, is that right?

A That's correct, yes.

Q Do you know where your ranchette in unit 17 is located?

A I couldn't pinpoint it, no.

Q In relation to Highway 528.

A If that was the main road, very close to it, fairly close to it.

Q Have you seen your ranchette lately?

A No, I haven't, no.

Q Not since 1974?

A No, not since 1969.

Q You didn't see it when you were there in 1974?

A No, we did not.

Q Have you made any inquiries lately as to the extent of development in unit 17 near your ranchette?

A No, we did not.

Q Did you know that within 700 feet of your property that a house was sold recently for $62,000?

MS. HYNES: Your Honor, can we have an instruction that what counsel says is not evidence in the case?

THE COURT: The same thing when you make a statement. I assume it is going to be tied up with evidence to substantiate the question.

MR. ARKIN: Yes, your Honor, it will be. I am not assuming something I cannot prove.

THE COURT: All right.

A Could you please repeat that?

MR. ARKIN: Mr. Reporter, would you repeat the question.

(Record read.)

A No.

Q Did you know, sir, that within 700 to 800 feet of your property, utilities, including water, electricity and others, were already implanted? Did you know that?

A No.

Q And you were not concerned enough to make an inquiry before you came here to testify?

A We tried to sell the property. We had no buyers.

Q Did you make any inquiries as to where utilities were?

A No, we did not.

Q And you said when you were out in Albuquerque in 1974, you looked about for homes, am I correct?

A That's correct.

Q And you made the statement that you looked in the northeast section of Albuquerque?

A That's correct, yes.

Q You also looked in the northwest section of Albuquerque?

A That's correct.

Q And you said that you looked about the Siandia Tramway, is that correct?

A Below the Siandia Tramway, near Albuquerque.

Q And you looked for homes in that area?

A We looked at homes there, yes.

Q Did you look for land in that area, too?

A No.

Q Just homes?

A That's correct.

Q You indicated that the homes in that area ran in the same price range as the homes at Rio Rancho?

A Roughly the same price range, yes.

Q What price range was that, sir?

A About 37 to 45,000.

THE COURT: Is that the price of the home without the land?

THE WITNESS: That is the price of the home with the land.

THE COURT: With the land?

THE WITNESS: Yes.

MR. ARKIN: Please mark as AM what appears to be a seven-page document.

XXX (Defendant Howard Friedman and Henry Hoffman Exhibit AM was marked for identification.)

Q Mr. Finnen, when you looked for homes out in the Albuquerque area, I take it that what you did was buy a local newspaper and look at the real estate section, didn't you?

A No. We just explored on our own.

We had contacted a real estate agent before we went down there.

Q Did you ever bother to buy a paper and look at the real estate section?

A No, we did not.

Q Do you know what the local newspaper is in Albuquerque?

A I don't recall its name.

Q Did you ever buy a newspaper when you were out there?

A Yes.

Q Would you kindly look at AM for identification, and tell me if by looking at that you are able to refresh your recollection as to --

A That's their newspaper, yes.

Q The Albuquerque Journal?

A Yes.

Q You never looked in the real estate section to see what homes in the northeast were selling for?

A No, we haven't.

Q If I were to tell you that homes advertised on September 3, 1976 --

MS. HYNES: Your Honor, I object.

MR. ARKIN: Let me finish my question, Ms. Hynes. If you have an objection you can make it then.

Q That homes advertised in the metropolitan newspaper for the northeast section for the day of September 3, 1976 ran from a low of $41,000 --

MS. HYNES: Your Honor, he is reading --

THE COURT: Let him finish his question.

Q -- to $85,000, that would surprise you, sir?

THE COURT: What is your objection?

MS. HYNES: Your Honor, my objection is that Mr. Arkin is reading from a document that is not in evidence and that there is no foundation for the document that he is reading from.

MR. ARKIN: Wait a minute, if your Honor please --

THE COURT: Wait.

I think the objection which I will sustain is it is two years after he was there. That is the basis upon which I sustain the objection.

He testified as to what was there in 1974. You are trying to bring out what the value is in 1976.

MR. ARKIN: Very well, your Honor.

Q Mr. Finnen, were you aware that in 1974, that land in the Siandia Tramway was going for upwards of $25,000 an acre?

A We are not talking about the tramway area itself, we are talking between the tramway and Albuquerque proper.

Q By the way, how far is the tramway to Albuquerque proper as --

A It is like 20 minutes.

Q Are you sure it is not like 35 to 40 minutes?

A We were staying at the edge of Albuquerque as you came in.

Q What about the tramway?

A We were directly south of the tramway.

Q You said yesterday that the northeast section was five minutes from downtown Albuquerque?

A The section that we looked at, yes.

Q But there are other parts of the northeast, aren't there?

A Yes, the mountain area.

Q Some of it might be 20 or 25 minutes from downtown Albuquerque?

A That's correct, yes.

Q You are just talking about the part you saw?

A That's correct, yes.

Q Yesterday you were asked the following question -- excuse me.

Before you came in to testify, I take it that you spent sometime with Ms. Hynes, didn't you?

A Yes.

Q And she gave you some idea of what questions she might ask you?

A Yes.

Q She told you that she was going to ask you what your view would be or how you would answer the question as follows:

If anyone connected with Rio Rancho had told you at the time you purchased your piece of property that the company had a report on the growth of Albuquerque and the report said that the growth would be to the northeast and not the northwest and would have no effect on Rio, that would have had an effect on your buying the property?

A Yes.

Q She told you she would ask you that?

A That's correct.

Q Did she tell you about reports commissioned by the company and not commissioned by the company which disagreed with the report she mentioned to you?

A I don't recall.

Q She didn't tell you that, did she?

A I don't recall.

Q Well now, do you know what an opinion is?

A Yeah.

Q Do you know what an opinion is?

A Yes.

Q That is somebody's point of view, right?

A Yes.

Q That is not absolute gospel fact?

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q If you were told that one person had an opinion which was negative and that four people had an opinion exactly to the contrary and these people were as responsible and honest as the other person, would you necessarily take the negative opinion in making your decision?

MS. HYNES: I object, your Honor.

THE COURT: Sustained.

Q If you were told that the company had in its possession reports which said that Albuquerque was growing to the northwest and that the growth of Albuquerque would, indeed, have an impact upon Rio Rancho and that people who were city officials of Albuquerque believed that the northwest was going to grow rapidly, would that have influenced your decision, sir?

A I bought my land on that basis.

Q So that if there were contrary opinions to the ones which Ms. Hynes mentioned yesterday, you would have let that enter your calculations, too, wouldn't you?

A Repeat that, please?

Q If you had contrary opinions to the one mentioned yesterday by Ms. Hynes, you would have allowed that to enter your decision making process as to whether you bought land?

MS. HYNES: Objection.

THE COURT: Overruled.

A I don't quite understand what you are asking.

Q Ms. Hynes mentioned one report to you yesterday, is that right?

A That's correct, yes.

Q And you said if you would have known about that report you wouldn't have bought your property, right?

A That's correct, yes.

Q But at the same time if you knew of other reports just as responsible which said to the contrary, then you still might have bought your property, is that correct?

A That's correct.

MR. ARKIN: I have no further questions.

THE COURT: Redirect.

MS. HYNES: I have no redirect, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MS. HYNES: Your Honor, the government calls Mrs. Ann Greenberg.

(Pause.)

MS. HYNES: Your Honor, I think that witness has gone to the ladies room and will be back in a moment.

THE COURT: We will wait a minute.

Do you have somebody else?

MS. HYNES: Your Honor, the other witness has been stuck on the way. We can call our office if Mrs. Greenberg does not come right back. She was here this morning in the witness room.

(Pause.)

XXX ANN GREENBERG, called as a witness by the government after having been first duly sworn, testified as follows:

THE COURT: You may proceed.

XXX DIRECT EXAMINATION

BY MS. HYNES:

Q Mrs. Greenberg, I am going to ask you to speak up. Are you a little hard of hearing?

A I don't know if I can hear you from the back there.

Q Tell me if you can't hear me. If you can't, I will move closer. Let me move closer right away.

Where do you live?

A I would rather you stood nearer and and I will hear every word you say.

MS. HYNES: Your Honor, if I may, I will stand over here. Let me bring the podium up.

Q Mrs. Greenberg, can you hear me now?

A Yes.

Q You must keep your voice up so the last juror back there hears the answer to your question.

Where do you live?

A New Hyde Park.

Q Where is that?

A That's right on the borderline of Queens County. I live on the Queens County side.

Q How old are you?

A 64.

Q Are you married?

A Yes.

Q Is your husband living?

A Yes.

Q How old is your husband?

A He is also 64.

Q Do you have children?

A One girl.

Q How old is your daughter?

A She will be 22 next month.

Q What is your educational background?

A Well, I have a high school educational background. I started college, but never continued.

Q Are you employed?

A Yes.

Q What are you employed at?

A I work as mailroom supervisor for a non-profit agency.

Q Mailroom supervisor?

A For a non-profit agency.

Q How long have you been so employed?

A Practically about 25 years.

Q With the same company?

A Well, when the agency started, I was one of the founders.

Q What is the agency? What is the name of your company?

A The name of the agency? Association for the Help of Retarded Children.

Q You said that you were one of the founders?

A Yes.

Q Is your husband employed?

A Yes.

Q Where is he employed?

A He works in the Post Office.

Q What does he do in the Post Office?

A He works in the postage due department, in the FDR Station.

Q How long has your husband been employed with the Post Office?

A Since after the war. I would say he must have started in 1947.

Q Do you own land at Rio Rancho Estates?

A What was that?

Q Do you own land at Rio Rancho Estates?

A Yes.

Q When did you first buy land at Rio Rancho Estates?

A In 1966, I think that was -- April, I think it was 1966.

Q What was your first contact with Rio Rancho Estates about April of 1966?

A Well, we received an invitation to attend a dinner and it happened to be very near our house and we were free that afternoon so we decided to go over and see what it was all about.

Q Do you recall where the dinner was held?

A The Lake Success Country Club, I believe that's what they called it. We live right near Lake Success.

Q Did you attend the dinner with anyone else?

A Just my husband and I.

Q When you arrived at the dinner do you recall what happened when you arrived at that dinner in 1966?

A Well, we were seated at a table and there were about eight or ten people at various tables. There must have been about ten tables, I don't remember exactly how many tables there were, and we were seated by the host or whoever stood by the door as you came in.

Q Approximately how many people were in attendance at that dinner that you best recall?

A Well, at that time I would imagine, if I remember correctly, about 40 or 50 people. I don't know exactly.

Q Approximately how many people were seated at the table that you and your husband were at?

A Approximately how many people what?

Q How many people were at your table?

A I would say there were about eight or ten people at each table. I can't tell you exactly how many were at mine.

Q Was there a representative from Rio Rancho Estates at your table?

A Yes, I believe there must have been one at every table. There was one at ours.

Q Do you recall after you were seated at the table what happened?

A Well, there was a short speech by some young man and we were told that after dinner we would see a film and that's exactly what happened.

We had the dinner and then they introduced these films, they lowered the lights and everybody watched the film. And then there was another speech by this same man.

Q Where was this man who gave the speech located, was he in the front of the room?

A In the front of the room, yes.

Q Did you see more than one film?

A I believe there were two short films.

Q Do you recall what the man in the front of the room said in the speech that he gave?

A In his first speech?

Q Do you recall what he said in his first speech? Tell us what he said in his first speech.

A Well, he told us that we were going to see a film about this wonderful property and after the film he would explain everything that we wanted to know and what it was all about.

The film would show us a lot of what it was that he wanted us to know.

When we see it we will see what a wonderful opportunity it is to buy this particular land. And then he showed us the films.

Q Then did he also make a speech after the films were over?

A Yes, there was a speech after which discussed the financial prospects, the wonderful investment, a wonderful place to live and he went on and on like that.

It was all very interesting.

Q Do you recall what he said about the financial prospects? You mentioned financial prospects, what did he say?

A That this particular land in this particular area he referred to the fact that it was very near Albuquerque, which was a very fast growing city in population, financially, and that the particular film we saw about Rio Rancho was nearby and Albuquerque was growing and could only grow in the direction of the Rio Rancho Estates and Albuquerque was bordered on three sides in such a way that this is the only way it could grow.

It was a land of opportunity and a good financial investment for anyone who was sitting in that room.

Q In 1966 you were how old, you and your husband were how old?

A How old? We were then 54.

Q Did you buy land that night?

A Yes, we bought land that particular night, yes.

Q Did the speaker say anything or make any comparisons about an investment in Rio Rancho with any other type of investment?

A Well, he referred to the fact that our land -- this particular land would improve in value so much that it could never compare to money that you just have in the bank. Having a house myself, I understood that part, but what he was stressing more was --

MR. ARKIN: Your Honor.

THE COURT: What's the matter?

MR. ARKIN: She was going to say what he was really trying to say.

THE WITNESS: Okay.

MR. ARKIN: It is not responsive.

THE COURT: I thought you wanted what she said.

Do you want to hear what she said?

MR. FLEMING: Yes.

THE COURT: Read it back.

(Record read.)

Q What was he stressing more?

A What he was trying to stress was the value of the land was such that no other investment could possibly increase in value as much as this particular land. That was the impression that we got.

Q You said you bought land that night. How much land did you buy that night?

A Just one acre.

Q I am going to show you what has been marked as Government Exhibit 1303 --

MS. HYNES: Excuse me, your Honor. Let me amend that.

Q I will show you 1300 and ask you if you can identify that. Does your signature appear on that document?

A Yes.

Q Is this the contract for the one acre?

A Yes, that's my handwriting, yes.

MS. HYNES: The government will offer Exhibit 1300.

MR. ARKIN: No objection.

XXX (Government's Exhibit 1300 received in evidence.)

MS. HYNES: Your Honor, may I just read a portion of this, please?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1300 in evidence to the jury.)

Q Mrs. Greenberg, do you recall who your salesman was on that first occasion when you bought land in Rio Rancho?

A We always had the same salesman, Stasiewicz.

MR. FLEMING: Is that Mr. or Mrs.

MS. HYNES: Mr.

Q I show you Exhibit 1301 and ask you if you can identify that.

A I think this is the one.

Q Do you recognize this document?

A 0257012, I believe that's the number.

Q Can you tell the jury and the court what this document is that I have shown you?

A I don't know what you mean.

Q Is that something you received at the dinner that first night?

A This is something that was handed to us when we were there.

Q At the dinner?

A At the dinner. The date is on the top and the place, April 17, 1966.

MS. HYNES: I offer 1301.

MR. ARKIN: No objection.

XXX (Government's Exhibit 1301 received in evidence.)

MS. HYNES: Your Honor, may I read a port of this document?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1301 in evidence to the jury.)

Q Mrs. Greenberg, there is a check mark next to number 8. Is that your check mark?

A Yes.

Q Is that the acre that you purchased that night?

A That is the one.

Q Were these the properties that were available for sale that night?

A Yes.

Q When the speaker finished his presentation after the movie, do you recall what happened?

A Well, the salesman at our table started discussing the various pieces of property that were listed on that sheet and asked us whether we would consider any one of them and told us, you know, how much they would cost. We were able to figure out what the definition meant and all that and we decided to buy that particular piece.

Q Were other salesmen calling holds on property?

MR. FLEMING: Objection.

A At other tables various people --

THE COURT: Objection sustained.

MS. HYNES: Mrs. Greenberg, you can't answer until a ruling is made on the objection.

Q What else was happening in the room at that time when your salesman was discussing the property with you?

MR. FLEMING: If anything, your Honor.

Q If anything.

A At all the tables the same thing was going on with a salesman at each table talking to the people at his table just like in our case and if anybody showed interest in a particular property they were -- the salesman would indicate this so that the other salesmen at the other tables wouldn't be discussing the same piece of property. That was how they worked it.

Q How did they indicate that?

A How?

Q Well, he would stand up and call out, don't consider number 8, someone here wants number 8 or something to that effect.

Q You said that you saw two films at the dinner. Do you recall the second film you saw, do you recall what the name of that second film was?

A I don't know what you mean. Do I recall what?

Q What do you recall about the films that you saw at the first dinner?

A The film had interviews with people who were there already. The film started with the showing of the entrance to the property as you go in from the outside and the film went all around the area and interviewed people who already were living there and they spoke to the camera about how happy they are and how everything is very nice and one particular man was a retired colonel and he said he loved it so much that he even bought more.

They showed people standing on bus stops here in the city in the snow and wouldn't you rather be, you know, in this land of sunshine because everybody laughed because everybody knew what that was and one time there was an interview and I remember seeing one of our television commentators there.

I saw the governor, the New Mexico governor there and senator there and the whole thing was showing the banks and just how happy everything would be for anyone who moved there. That was about what it amounted to.

Q When you bought your property that night, what was your reason for buying that property?

A It seemed like a good investment at the time.

Q At the time that you bought that property in 1966, the one acre, did you expect or intend to move to Rio Rancho?

A I don't think we ever did expect to move there.

Q Did you or didn't you?

A I don't think so. I don't think we ever had in mind that we would move there.

Q After you bought your first piece of property, did you attend another sales dinner?

A Yes, we did. I don't remember, we bought another piece of property after that. I don't remember whether we attended a dinner in between, but we did buy property the following year.

Q When you bought property the following year, did you buy it at a sales dinner? Did you go to a dinner?

A That was practically the same way as the first time.

Q But was it a sales dinner that you bought your property at, your second piece of property?

A The same, yes.

Q How did you get invited to the second dinner?

A The same way we got invited and sometimes we received a telephone call asking us if we would like to attend one or received a card in the mail and received a telephone call after we received the card, you know, asking whether we would attend.

Q Who made the telephone call, if you recall?

A The telephone call also came from Mr. Stasiewicz.

Q He was your sales person for the first purchase?

A Yes, he would call me at my office or at my home. He was the one that always called me.

Q Do you recall approximately when you attended the second dinner and bought a piece of property?

A When or where?

Q When.

A It was about a year after the first one.

Q I am going to show you Government Exhibit 1303 and ask if you recognize that.

A Yes.

Q Is this a contract for another piece of property?

A Yes.

MS. HYNES: I offer it.

MR. ARKIN: No objection.

Just one question. Ms. Hynes, is this the entire document or was there another page annexed to it?

MS. HYNES: That's the document that the witness turned over. If there's another page I will check it. Do you know that there's another page?

MR. ARKIN: I am asking you the question, ma'am.

I have no objection to that document.

XX (Government's Exhibit 1303 received in evidence.)

MS. HYNES: Your Honor, if I may read one part of this.

(Ms. Hynes read from Government's Exhibit 1303 in evidence to the jury.)

Q Mrs. Greenberg, do you recall the dinner that you attended in April of 1967 when you bought the piece of property referred to in Government Exhibit 1303, where was that dinner?

A Where when we bought this one?

Q Yes, where was the dinner held, if you remember?

A I don't really remember that. It might have been at Anton's, I am not too sure.

Q Is that located in Queens?

A Yes, Queens Village. It might have been there, but I am not too sure because we attended so many of them I don't remember each one.

Q At the dinner that you attended in April of 1967, was there a sales presentation made?

A In each case it was Mr. Stasiewicz.

Q You testified that at the first dinner there were films and there was a speaker who made a speech.

A Yes. They were all the same way.

Q So the second dinner was similar?

A Yes, they were always the same way. There was always someone who made the speech first and they then showed the films and then there was a speech afterwards. They were all done the same way.

Q Do you recall whether the speech that was given at the dinner when you bought the second piece of property was substantially the same as the speech that was given the first time?

A Very much the same. As a matter of fact, the film, I saw the same film so many times, too. I recognized the same film.

Q Was it the same sales person who sold you the second piece of property?

A Yes, Mr. Stasiewicz.

Q What type of property was the second piece of property that you bought?

A This was considered a business property. This was going to be multiple dwellings, in other words, apartments instead of private homes and it was going to be a business district with stores and that's how it was describ to us. It was certainly nothing we were going to live in.

Q Who described that to you?

A The salesman himself.

Q What did he say about the commercial and business property?

A Well, this particular property because it was business property was so worthwhile, he told us, make sure you never do anything with it or sell it or anything until you see us first because this is very valuable.

Q You bought two lots of the multi-dwelling?

A Yes.

Q I will show you Government Exhibit 1304. Do you recognize this?

A This is the one, yes. That's the one.

Q Is this the location of your two lots?

A Yes, that's unit 12, that's the one, yes.

Q Did you receive this at the sales dinner that you attended?

A Yes. I can't see with these glasses.

He marked it off for us.

Q Who marked it off for you?

A It was marked off here for us.

Q Who did that?

A The two red marks.

Q Who marked it off?

A He must have because I didn't have red marks.

Q Is that Mr. Stasiewicz?

A Yes, because I didn't have any red pencil with me.

MS. HYNES: The government will offer 1304.

MR. ARKIN: We have no objection to Exhibit 1304.

XXX (Government's Exhibit 1304 received in evidence.)

MS. HYNES: May I read from a portion of 1304, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1304 in evidence to the jury.)

(Continued on next page.)

Q Mrs. Greenberg, what was the reason for buying these two commercial lots in April of 1967?

A Well, it was investment purposes.

Q And what, if anything, were you told about improvements that would be made to those lots that you were buying?

MR. FLEMING: I am sorry, Ms. Hynes, are you talking about the 1967 purchase?

MS. HYNES: The 1967 purchase of two commercial multi-dwelling lots.

A What improvements would be made?

Q What, if anything, was told to you about what would be done to those lots?

A From -- as we understood it, all utilities would be put into anything that anyone bought.

MR. FLEMING: I object, your Honor.

THE COURT: Wait, Mrs. Greenberg.

You can't tell us what you understood, you have to tell us what was told to you.

What words were used by Mr. Stasiewicz?

THE WITNESS: I couldn't say anything that people said to me word for word ten years ago. That I couldn't swear.

THE COURT: As close as you can.

THE WITNESS: I wouldn't be able to say exactly word for word what someone said, no.

THE COURT: If you can't give us word for word, can you give us generally what they said to you?

THE WITNESS: Yes. Generally, the -- generally, what was said, that improvements would be put into whatever property people bought.

Q And did they tell you generally what these improvements --

A That is water, electricity, I mean, things like that.

MR. FLEMING: I am sorry, your Honor. I object to "things like that" because I don't know what it means.

THE COURT: I will just strike "things like that."

Water and electricity would be put in?

MR. FLEMING: Yes. No objection.

Q Were you told anything about water and electricity?

A Yes, utilities, utilities.

Q Were you told anything with respect to roads?

A Was I told what?

Q Were you told anything with respect to roads that would be put in?

A Oh, roads would always be put in. That was in the literature, too.

Q And were you told anything with respect to what kind of roads would be put in?

A Very good roads.

Q Was anything said to you as to how long it would be before utilities and roads would be put in on this commercial property?

A No specific time was given, no specific number of years.

Q Pardon?

A No specific number of years.

Q Apart from no specific number of years, was any indication given?

MR. FLEMING: Objection.

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Did there come a time when you purchased more property at Rio Rancho Estates?

A Yes, we did.

Q And did you attend another sales dinner in about April of 1968?

A 1968 was it?

I believe it was the following year.

Q Let me show you Government's Exhibit 1305, and ask if you can identify that (handing).

A Yes, that's the one. That's the one.

Q Is this a contract for another purchase of property?

A Right.

MR. FLEMING: I have no objection.

MR. ARKIN: No objection.

XXX (Government's Exhibit No. 1305 marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1305 in evidence to the jury.)

Q Was Mr. Stasiewicz your sales person in connection with this property as well?

A Yes, I believe he was the sales representative.

Q And Government's Exhibit 1305 has representative at the bottom Stasiewicz.

(Pause.)

Q The property in unit 12, one acre in unit 12, what property was that, Mrs. Greenberg?

A That was -- that was land for houses, just like the other one was.

Q So as of 1968, you had one acre in unit 12 of residential and you had one acre --

A The first one was unit 2, this was unit 12.

Q And you had one acre in unit 2 residential and you had two commercial and multi-dwelling lots?

A This property was nearer to where the developing was going on, so we thought it was worthwhile being a lot closer because of the value of the property being that much higher at the time.

Q And what was your reason for purchasing this acre in 1968?

A Well, that's the reason. Because they were -- where they were developing the property, as they went further and further, this was much, much nearer than the first property we bought, which they would take a long time to get to.

Q And in April of 1968, when you bought that additional acre of land, did you intend to move to Rio Rancho at that time?

A No.

Q When you attended the dinner in April of 1968, was there a sales presentation made at that dinner as well?

A A salesman?

Q Was there a speaker in the front of the room?

A The same -- yes, the same -- the dinner was held the same way; the same speaker, the same films, in some cases the same film each time, and the speaker after the films.

In some cases it was the same person doing that -- these speeches several times was the same person.

I think I remember two different people at all the dinners we attended who made the main speech in the beginning and the end.

Q Do you recall what their names were?

A No. Maybe my husband would, but I don't know. I'm not too sure of the names.

Q Okay.

When you attended the dinner in 1968 and bought another acre of land, was anything said to you about your prior investment in unit 2?

A Only that the value of the property had gone up.

Q And do you recall how you were told that; what was said?

A Just in the course of conversation.

Q Did anyone show you --

A Just in general conversation while we were at the table.

Q And that conversation was between yourself and whom?

A I don't know what you mean.

Q Who told you the value of your property had gone up?

A Oh, when we were talking to our salesman. He was the only one who we really spoke to when it came to something like that.

Q When he told you that, did he refer to anything?

A What do you mean? I don't know what you mean.

Q Were you shown a price list?

A In the value of the property that we had before?

Q Yes.

A No, we didn't discuss that.

Q Did there come a time when you attended another dinner in November of 1971?

A Right.

Q And did you buy additional property in November of 1971?

A Yes. Well, we bought property that day, but we were exchanging the other property for this one and paying the difference.

Q Let me show you Government's Exhibit 1306, and ask you if you recognize that (handing).

A Yes. The last one we bought we were exchanging for this one, unit 25.

MS. HYNES: I will offer this contract.

MR. ARKIN: We have no objection to this exhibit.

XXX (Government's Exhibit No. 1306 marked for identification received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1306 in evidence to the jury.)

Q Mrs. Greenberg, did you trade in your lot in unit 12 for lots in unit 25?

A Right.

Q And did this document, Government's Exhibit 1306 --

MR. ARKIN: Excuse me, there is no answer on the record. The lady nodded her head and Ms. Hynes continued with the next question.

MS. HYNES: I am sorry, you didn't hear.

Q Mrs. Greenberg, these gentlemen on here have to hear your voice, so if you can throw your voice out there --

MR. ARKIN: It is ladies and gentlemen.

A No. I was just saying that Mr. Stasiewicz -- what we did exchange the property, one for the other.

Q And the document 1306 in evidence has "under lots 40" and then it has CR.

Do you know what CR is?

A Corner.

Q So one of these lots was a corner lot?

A Right.

Q And there are three lots that you -- you traded in one lot and bought three?

A Right.

Q And when you traded in the lot in unit 12, were the payments that you had made for the lot in unit 12 -

A I don't think we -- wait. I don't think we had finished paying for that particular property and the allowance was transferred to the other -- in our property.

Q But whatever payments you did make, were transferred to your new purchase in unit 25?

A Yes.

Q In addition, it says "appreciation on prior property."

Do you know what that is?

A Well, the prior property had increased somewhat in value and that was applied to this property.

Q And that was applied to the new property that you were buying in unit 25?

A Right.

Q And the total price of the property in unit 25, including your payments on the previous property plus your appreciation, was higher?

A Yes.

Q And your sales person, again, was Mr. Stasiewicz?

A Stasiewicz.

Q And what, if anything, did Mr. Stasiewicz say about the lots in unit 25?

A Well, this was supposed to be for luxury housing. This was not the same type of property as the others that had been sold. This was only for luxury, expensive homes.

Q And what was your reason for trading in your lot in unit 12 and buying three lots in unit 25?

A Well, actually, our idea was not so much exchanging that piece of property, at the time this was done, our idea was that all of our property should be exchanged for this one, but they couldn't do that, so we settled for it this way.

We didn't want -- well, do you want me to go on? Do you want me to say any more?

No, I don't know how much you want me to say, tell the whole story or answer the question.

Q I want you to tell me what the reason was for trading in the lot in unit 12 for the lot in unit 25.

A Well, as I said, what I really wanted was to transfer all of the property that we owned for this one, because the amount --

Q Did you tell that --

A Oh, yes, oh, yes.

Q Who did you tell that to?

A Yes, yes, I told him that.

Q Who?

A Mr. Stasiewicz.

Q And what did Mr. Stasiewicz say to you?

A Well, they couldn't, but this was the only thing that they could do, was to transfer that one piece, and we decided of all the three to transfer this one.

But I wanted all three to be exchanged so that we wouldn't have to pay any more money than we had to.

Q At the time that you bought the lots in unit 25, did you intend to move to Rio Rancho Estates?

A No. We never had intentions of moving there.

Q I will show you Government's Exhibit 1306-A, and ask if your signature appears on that (handing).

A Yes, I remember. That's our signatures.

Q And the markings, these initials, do you recognize your initials there?

A Yes, those are our initials, yes.

MS. HYNES: I offer 1306-A.

MR. ARKIN: No objection.

XXX (Government's Echibit No. 1306-A marked for identification received in evidence.)

THE COURT: We will have a recess.

(Recess.)

(Continued on next page.)

(In open court - jury present)

MS. HYNES: May I proceed, your Honor.

THE COURT: Yes.

MS. HYNES: Your Honor, I would like to read from Government's Exhibit 1306-A in evidence, which has just been received in evidence.

(Ms. Hynes read from Government's Exhibit 1306-A in evidence to the jury)

DIRECT EXAMINATION CONTINUED

BY MS. HYNES:

Q Mrs. Greenberg, on Government Exhibit 1306, which is your purchase in November of 1971, the monthly payments are $95 a month.

A Right.

Q At that time were you still making payments on your other purchases of property, if you recall?

A I don't think so. I am not sure exactly when we finished paying the other. We may have still owed something.

Q At the time that you purchased the property in November of 1971, what was your reason for purchasing that property, the proerty in Unit 25?

A Well, aside from the fact that we were told it was going to be for expensive homes and it would be worth a lot more money, I wanted to exchange whatever we had, my original intention was to exchange all the other property into this one piece of property because I thought it would be quite an even exchange because of the appreciation in value of the other pieces of property.

More or less it would be practically an even exchange I thought.

Q Were you permitted to do that? Were you permitted to exchange all of your property for --

THE COURT: She already answered that question

A Yes, I think at that time --

THE COURT: Pardon me. The witness has already testified that she asked to exchange all three and Stasiewicz said they could only do one and she chose the one. That is in the record.

Q Apart from that, Mrs. Greenberg, my question is what was your reason for buying the lots in Unit 25?

A We were told that it was a special piece of property which would appreciate a lot in value because it was going to be for luxury homes.

Q Was anything said --

A Since we didn't intend to live where we had bought property, we thought it would be a better investment.

Q Was anything said to you about the possibility resale of these lots in Unit 25 by anyone connected with Rio Rancho?

A The possibility of what?

Q Resale of the lots in Unit 25.

A I don't know what you mean. I don't quite get what you mean.

Q Was anything said to you when you purchased the lots in Unit 25 about resale?

A I don't know what you mean. I must be missing something. I don't quite get what you mean.

Q Yousaid that you purchased the lots in Unit 25 for investment.

A Right.

Q Was anything said to you about reselling that investment?

A The 25?

Q Yes.

A Oh, I wasn't sure which property you were referring to.

Nothing was said specifically about the reselling. All we were told was that it was for luxury homes --

MR. FLEMING: Objection.

THE COURT: She is testifying as to what was told.

MR. FLEMING: I thought the answer was nothing specifically.

THE COURT: Then she said we were told. Let's find that out.

A We did not discuss reselling it at the time.

Q Did you discuss reselling it at any time?

MR. FLEMING: I am sorry.

A Not at that time.

THE COURT: Not at that time.

A Not at that time, no.

Q When you attended the dinner in November of 1971 when you bought the additional property, was anything said to you about the value of your prior purchases?

A Well, that they had all gone up in value.

Q Who told you that?

A This salesman.

Q That was Mr. Stasiewicz?

A Right.

Q Mrs. Greenberg, were you aware when you bought your property at Rio Rancho that you could take a company tour and visit the property?

A Yes, we were told that.

Q Did there come a time when you made arrangements to take a company tour to visit the property?

A Yes, we decided to do it in 1972. Our child was a little bit too young to leave before that. At that time we felt she was old enough to leave her.

Q How old was your child in '72?

A Seventeen.

Q Did you, in fact, take a company tour to visit your property at Rio Rancho?

A Yes, we made arrangements for that.

Q Did you actually go on the tour?

A No.

Q Can you describe what happened when you did not go on the tour?

MR. FLEMING: I don't understand that.

MS. HYNES: I withdraw that question, sorry. Withdraw the question.

Q What was the reason for not going on the tour?

A We made arrangements in April and I got sick --

THE COURT: Wait.

MR. FLEMING: Objection, your Honor.

THE COURT: Sustained.

A I got sick in June.

MR. FLEMING: I withdraw my objection, your Honor.

Q Did there come a time when you made arrangements to resell your property at Rio Rancho Estates?

A Yes, in 1972.

Q In 1972?

A Yes.

Q Did there come a time when you contacted the company in connection with trying to resell your property?

A Right. Yes, I did.

Q Who did you contact?

A We wrote to the office, AMREP I think it was.

Q AMREP office. Where did you write to?

A I think -- I believe the address was on Broadway, 1790 Broadway, I am not sure of the number. It was on Broadway in the fifties.

Q Was that ATC Realty Corporation?

A No, AMREP.

Q Did you write it to anyone's attention at that address?

A Yes. I think it was 1790 Broadway.

Q I am going to show the witness Government Exhibit 1308, which consists of three documents, and ask if you can identify that.

A But we didn't go to this one. I don't think it was ATC.

Q When you contacted the office, Mrs. Greenberg, at 1790 Broadway, did you say that you wrote them a letter?

A Yes.

Q Did you get a response to the letter that you wrote to them?

A Yes, we were given an appointment.

Q You were given an appointment.

A We were given an appointment in response to our letter.

Q Who was the appointment with?

A I believe his name was Mr. Miller.

Q Mr. Miller?

A Yes.

Q Do you know what position Mr. Miller held?

A I think he was vice-president. I am not quite sure. I think he was one of the vice-presidents.

Q Did there come a time --

MR. FLEMING: I object and ask that be stricken, your Honor. I don't think the witness is competent to testify to that.

THE COURT: Overruled.

Q Did there come a time when you did meet with Mr. Miller?

A Yes, we were there.

Q Where did the meeting take place?

A In his office.

Q Where was that office?

A I believe it was on Broadway. It was not the 61st Street address. It was on Broadway. It must have been fifty-something, 57th and Broadway, something like that.

Q Again keep your voice up, Mrs. Greenberg.

A I believe it was on Broadway. I think it was about 57th Street and Broadway, I don't remember the exact street.

Q Who was at the meeting?

A My husband, Mr. Miller and Mr. Stasiewicz was there, the four of us.

Q What did you discuss at that meeting?

A We discussed the problems we were having in trying to get our property resold or bought or sold by them for us.

Q As best you recall, what did Mr. Miller say to you and what did you say to Mr. Miller?

THE COURT: Before we get there, let's get the date.

A That it would be very difficult --

THE COURT: Wait.

Get the date.

Q Do you recall when that meeting took place?

A September, I believe it was 20 something in 1972.

Q In 1972, September?

A Yes.

Q Can you tell us as best you recall what Mr. Miller said to you and what you said to Mr. Miller at that meeting?

A Well, they knew why we were there because our letter explained it so it was just a matter of discussing what our letter said.

In our letter we explained the fact that we must sell the property now and how could they help us sell it.

MS. HYNES: At this time, your Honor, let me offer Government Exhibit 1308 in evidence.

MR. ARKIN: No objection..

(Government Exhibit 1308 received in evidence)

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(Pause)

MS. HYNES: Your Honor, may I read from 1308?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 1308 in evidence to the jury)

Q Is that your address, Mrs. Greenberg?

A Yes.

(Ms. Hynes continued to read from Government's Exhibit 1308 in evidence to the jury)

Q Mrs. Greenberg, you testified that you did have a meeting with Mr. Miller.

I ask you again: What did Mr. Miller say to you at that meeting and what did you say to Mr. Miller at that meeting?

MR. FLEMING: Objection.

THE COURT: Overruled.

A At the meeting?

Q At the meeting that you had with Mr. Miller.

A Well, we were discussing how would they go abou helping us sell the property that we owned and they said it wasn't very realistic because they had plenty of property of their own to sell.

The only suggestion they would have would be for us to get in touch with real estate brokers in the Albuquerque area and see if they could help us sell our property.

Q Did you do that?

A Which I did. We wrote to the real estate agency in Albuquerque and they sent us a book listing all the brokers in Albuquerque.

Q Did you send a letter to brokers in Albuquerque?

A So I got up a letter, a very brief letter describing it and I sent it to seventy-five of the -- there are a lot of people in that book, but we picked the ones that we believed were nearer to Rio Rancho in going through the book.

Q How many brokers did you pick?

A I received two answers.

Q My question is --

A How many --

Q How many brokers did you send a letter to?

A To seventy-five.

Q To seventy-five?

A Yes, I counted out seventy-five names.

Q Let me show you Government Exhibit 1309 and ask if you can identify it.

A Yes, that is the letter I sent. I sent seventy-five of them.

MS. HYNES: I offer Government Exhibit 1309.

MR. ARKIN: No objection.

(Government Exhibit 1309 received in evidence)

MS. HYNES: Your Honor, may I read from 1309?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 1309 in evidence to the jury)

Q This was the letter that you sent to the seventy-five brokers?

A Yes.

Q That was in November of 1972?

A Yes.

Q Did you receive any responses to the letters that you sent?

A I sent seventy-five and got two replies.

Q Two replies?

A Right.

Q I show you Government Exhibit 1309-A and ask if you can identify that.

A Yes. Those were the two I received.

MS. HYNES: I offer it.

MR. FLEMING: I object, your Honor.

THE COURT: On what ground?

MS. HYNES: Third parties.

THE COURT: Let me see them.

(Pause)

THE COURT: Are these the two letters?

Are these the two letters that you received, Mrs. Greenberg?

THE WITNESS: Yes.

THE COURT: Clearly the first one cannot come in. The second one can.

MS. HYNES: The government will amend its offer and offer the second letter that is dated December 15, 1972. That will be Government Exhibit 1309-A.

THE COURT: All right.

(Government Exhibit 1309-A received in evidence)

xxx

MS. HYNES: Your Honor, may I read from 1309-A?

THE COURT: You may.

(Ms. Hynes read from Government's Exhibit 1309-A in evidence to the jury)

Q Mrs. Greenberg, did you list your property with the Multiple Listing Service in Albuquerque?

A Well, I answered both letters, yes.

Q Were you able to sell your property? Were you able to sell your property?

A They never answered the letters.

Q Did you thereafter contact the company again?

A AMREP?

Q Any company.

A No. I don't think I ever did.

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76A pm

Q Let me show you --

A I wrote a letter after that. That's the one I wrote after that.

Q Let me show you Government Exhibit 1310.

(Handing)

Do you recognize that letter?

(Pause)

A Yes, I remember this letter.

Q I show you Government's Exhibit 1310-A, which is two letters.

Did you receive those letters?

A Right. This was after that, yes.

MS. HYNES: The government will offer 1310-A.

We will also offer Government's Exhibit 1310.

MR. FLEMING: Your Honor, may I ask one question?

THE COURT: Yes.

VOIR DIRE EXAMINATION

XXX BY MR. FLEMING:

Q Mrs. Greenberg, did you type these letters or write them or did your husband?

A Are you talking --

THE COURT: You better come up here, Mr.

Fleming.

Q I am sorry.

A That letter (indicating).

Q This letter, which is 1310 for identification, did you compose that letter or did your husband?

A I don't get what you are saying. I don't hear what you are saying.

MS. HYNES: She does not hear you.

THE COURT: Keep your voice up.

Q Did you write the letter or did your husband?

A Oh, I always wrote the letters.

MR. FLEMING: Your Honor, I object to both of these on relevancy.

THE COURT: Let me see them.

MR. FLEMING: And as cumulative.

(Handing to the Court)

THE COURT: Objection sustained.

MS. HYNES: Your Honor, I will withdraw the offer on 1310, but I would renew the offer on 1310-A.

1310 shows it is a response to 1310-A.

I will not offer 1310, but I will renew an offe on just 1310-A.

MR. FLEMING: Is that the response?

THE COURT: You mean to set up a meeting?

The witness can testify to that without that.

BY MS. HYNES

Q Mrs. Greenberg, do you recall after the first meeting that you had with Mr. Miller whether there was a suggestion that you again meet with representatives of ATC Realty?

A We never met with him again, no. That was the only meeting I had with him.

Q That is not my question.

My question is --

THE COURT: Why don't you show her the letter and see if that refreshes her recollection, 1310-A.

Q Will you take a look at 1310-A.

A This was in 1973?

Q Read that to yourself.

(Pause)

A I remember the letter.

Q Does that refresh your recollection that the company suggested that you again meet with representatives of ATC?

A I don't remember our meeting with them.

Q No, thatis not my question.

Does it refresh your recollection that the company suggested that you meet with representatives of ATC Realty?

A I don't know what you are referring to.

THE COURT: YOu have a letter there --

A In this letter?

Q Listen to the Judge.

THE COURT: You have a letter there which says something to you. You have just read it. Right?

Does that refresh your recollection as to whether the company suggested that you have another meeting with them?

THE WITNESS: Well, I remember this letter, yes, this particular letter, but we didn't do it.

THE COURT: You didn't do it?

THE WITNESS: Yes. I only know of one meeting.

THE COURT: All right.

THE WITNESS: I only know of one meeting. We were only in their office once.

Q Mrs. Greenberg, I am going to show you Government's Exhibit 1310-B and ask you --

A Yeah, that's my handwriting.

What's the date? It's hard to make out. June 1973?

Q June 11th.

Read the typed copy (handing).

(Pause)

A Yes. We did not go to a meeting, right.

Q I am going to show you Government Exhibit 1310-C (handing).

Did you receive that letter?

A I remember this letter, yes.

MS. HYNES: I offer Government's Exhibits 1310-B and C.

MR. FLEMING: The same objection, irrelevant and cumulative.

THE COURT: Let me see it.

(Handing to the Court.

MR. FLEMING: And incompetent. At least one is incompetent, if your Honor please, as hearsay.

MS. HYNES: 1310-B, your Honor is being offered to show notice that the advice at the first meeting was followed and the results--

THE COURT: It is already in the record.

MS. HYNES: Not the notice to the company, your Honor.

THE COURT: Objection sustained as to 1310-B.

(Pause)

THE COURT: 1310-C can come in.

(Government Exhibit 1310-C received in evidence)

xxx

Q Mrs. Greenberg, did you notify anyone connected with Rio Rancho Estates that you had contacted the seventy-five brokers in Albuquerque?

A Right.

Q Who did you notify?

A What was that?

Q Who did you tell that to? Who did you notify about that fact?

A Who did we tell this to?

Q Yes.

A Well, in our letters to Rio Rancho we explained the fact we had written to seventy-five people.

At that time I had only gotten one answer, then I got another one.

MS. HYNES: Your Honor, at this time I would like to read from 1310-C in evidence.

THE COURT: Go ahead.

(Ms. Hynes read from Government Exhibit 1310-C in evidence to the jury)

Q Mrs. Greenberg, apart from the writing to the seventy-five brokers in Albuquerque, did you make any other efforts to resell your property at Rio Rancho Estates?

A Yes, we did.

Q What were those efforts?

A One thing, we received information about an auction that was being held on the sale of property, including Rio Rancho property.

Q And where was that auction held?

A That was called the Rocky Mountain Auction, something like that.

Q Do you know where the auction was actually going to be held?

A Out west. I don't remember exactly. Colorado-- I don't know the actual address.

MR. ARKIN: If your HOnor please, may we have a brief side bar on that?

THE COURT: You may.

Maybe we better declare a luncheon recess now.

See you at 2:00 o'clock.

(Jury left the courtroom)

THE COURT: Yes?

MR. ARKIN: Your Honor, Ms. Thompson reminds me that during the pretrial we had discussion about evidence relating to the Rocky Mountain Auction, and as I recall your Honor's ruling -- I don't have the record in front of me -- your Honor said that any evidence aside from evidence coming directly from the auctioneer would not be allowed in and you would rule upon its relevance and other aspects of its admissibility at that time.

Now Ms. Hynes seeks to bring out evidence regarding the Rocky Mountain Auction to this witness. I don't think she is competent to talk about it.

THE COURT: It depends what she is going to bring out.

How about an offer of proof, Ms. Hynes?

MS. HYNES: The offer of proof would be that this witness would merely testify that she was advised of an auction, notified of an auction of lots at Rio Rancho Estates, that she listed her property --

THE COURT: Wait. At Rio Rancho? An auction of lots at Rio Rancho?

MS. HYNES: No, I am sorry, I misstated myself.

It was an auction of lots that included lots for Rio Rancho Estates that would be sold at this auction and that you could list a lot that you owned at Rio Rancho Estates at this auction.

The witness will testify that she listed the lot and that her lot was not sold at that auction.

That's all I seek to bring out.

THE COURT: I see no objection to that.

MR. ARKIN: Let me remind your Honor of one fact:

This particular auction which Ms. Hynes sought to introduce evidence of took place after the FTC proceeding and after all of the hullaballo of this case.

It was our presentation to your Honor that it was unfair to adduce evidence of this auction because it was a distress sale by its very nature of being an auction.

When you put an auction in the context of all of the publicity and all of the charges being hurled against the company and Rio Rancho at that time, it produced a warped and unfair, exaggeratedly warped and unfair concept as to what the price of the lots was, the value of the lots was and, accordingly, we argued at that point that it should be kept out.

I believe that it was your Honor's ruling that except for the auctioneer, you would keep out, and at that time you would consider our arguments based upon the distressed nature of the sale.

THE COURT: When was the sale held?

MS. HYNES: Your Honor, there was an auction that was held in August of 1975. That was the first auction. There was another auction held in November of 1975.

We would seek to offer the information concerning the auction in August.

My recollection of your Honor's ruling is that Mr. Arkin made the same arguments when we were going through the documents and dealing with the auctioneer's documents, Mr. Arkin made the point that he believed that it was a distress sale. Your Honor overruled that objection.

It is the government's contention that the auction was held, that it was not a distress sale, that there had not been a local market for these lots at any time during the entire time that this company was selling the land.

The government's proof will also show that Albuquerque Multiple Listing Service had sent out form letters to its membership which the membership then, in turn, sent to customers who were trying to list their lots discouraging them from listing their lots saying there was no local market for the lots.

So the argument at pretrial was that, in fact, this was not a distress sale.

Mr. Arkin was certainly free to prove on his case that there was a local market and that this was a distress sale, but that the government's proof would be that there wasn't and there was, indeed, no local market and for that reason it was relevant proof.

Your Honor agreed with the government, overruled Mr. Arkin's objections and ruled that the government could introduce that evidence.

MR. ARKIN: Your Honor's ruling is a matter of record and that can be checked by Ms. Hynes during the luncheon recess.

THE COURT: I will check it during the luncheon recess. Do you know what particluar day it was of the pre-trial motions?

MR. ARKIN: I can't make a representation, your Honor, what particular day.

I can say this, though:

Now I am encouraged to hear that Ms. Hynes is only concerned with respect to the August, 1975 auction.

That followed a spate of publicity following the FTC charges.

Your Honor, Albuquerque is not quite so cosmopolitan, so every day in the Albuquerque Journal, every day -- not every day, but very frequently in the months following the FTC charges, there have been articles about this very case. Indeed, my partner, Mr. Arisohn, reminds me that in August of 1975, or thereabouts, there was an article regarding the assertion of the privilege of the grand jury by certain individuals involved in this case, all of which, in this kind of a setting in Albuquerque, would tend to make the auction sale which took place a very artificial one indeed.

Auction sales, I would suggest, are artificial anyway. This is just exacerbation.

MR. FLEMING: To explain why there is an artificial value, we would have to get into FTC charges at least.

THE COURT: Why?

MR. FLEMING: I say, in order to explain why we believe -- if the evidence comes in -- in order to explain why we believe whatever price we received at the auction, whatever it may have been, was not a true measure of value, we would have to get into evidence the FTC charges.

THE COURT: No.

The only evidence you might get into is the amount of dissemination there was of the pending FTC hearing.

MR. FLEMING: It wasn't pending, it was filed. It had been filed.

I think it was in the company's documents at that time.

My point is that we say that the auction price is not a reflection of value since, in a sense, the government's prophecy is self-fulfilling.

The FTC complaint is filed which alleges, I guess, exactly what this document alleges and that is publicly served and thereafter there is an auction.

The only way we can show that the price received at the auction does not represent true value is to show that the FTC took actions against the company.

THE COURT: The fact that the FTC filed a complaint doesn't take an awful lot of proof.

MR. FLEMING: No. But it can be terribly prejudicial, if your Honor please.

That is my point.

MS. HYNES: My problem with the analysis of Mr. Fleming and Mr. Arkin is the FTC filed their complaint in March of 1975. That was it.

I mean, thereafter, Mr. Arkin keeps saying there were stories daily or almost daily in the Albuquerque papers. I am not aware of that.

I am sure the Albuquerque paper may have carried a story when the FTC first filed its complaint, but there is no foundation for a continuous barrage of publicity.

The auction was held several months later, in

August of 1975, and there is no real foundation.

We just get the arguments of counsel without any real factual backup and support as to the basis for those kinds of arguments.

Basically, they are making an adverse publicity argument in Albuquerque.

THE COURT: That's right.

MS. HYNES: Yes, I agree.

If the papers in Albuquerque on March 20th or the following day carried a story, they they carried a story.

If they didn't carry another story for the next four months, I don't think that that is a proper foundation to keep out relevant proof given that proof in the context of the other proof that the government is offering that there wasn't a local market and prior to the Federal Trade Commission's filing of its complaint the local Albuquerque Board of Realtors was discouraging their brokers from even listing this property because there was no market for it.

So the argument that because the FTC filed the complaint that made it a distress sale is a bootstrap argument. It is the only peg that they have to hand their hat on, and the government's contention is that it is a false peg because there, in fact, was never a market anyway.

And Mr. Geller in this 1973 letter which we just read to the jury is saying there is no local market. The company recognized in 1973 that there wasn't a local market. So it is not a distress sale.

THE COURT: Let us go back. Some of these witnesses said they were told there would be no resale while AMREP was selling.

MR. FLEMING: They also --

THE COURT: It was brought out by your witnesses.

But I will reserve decision on this until this afternoon.

MR. FLEMING: I just want to make one point.

If Ms. Hynes is saying as she is saying they already established there was no resale market prior to the filing of the complaint,the proof of the auction I can't see is anything other than prejudicial.

I mean, clearly if somebody says a bank is low on reserves and they run on the bank, they can't use that as evidence that they are low on reserves.

(Luncheon recess.)

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AFTERNOON SESSION

2:00 p.m.

(In the robing room.)

THE COURT: Mr. Glendon has a problem?

Yes, Mr. Glendon.

MR. GLENDON: Judge, we have been having some discussions with Mr. Friend and it's been determined at his request that my presence here on a daily basis is not required. My partner, Mr. Weidner, will be here on a daily basis.

THE COURT: Where is Mr. Friend?

(Defendant Friend enters the robing room.)

MR. FLEMING: Your Honor, the jury is just going into the box.

(The door is closed.)

BY THE COURT:

Q Mr. Friend, Mr. Glendon has indicated that you will not require his presence here on a daily basis and that Mr. Weidner, Mr. Glendon's partner, may represent you in Mr. Glendonrs absence; is that correct?

A That's perfectly satisfactory.

Q That's perfectly satisfactory to you?

A Yes, your Honor.

THE COURT: All right.

DEFENDANT FRIEND: That's fine.

THE COURT: All right.

MS. HYNES: Your Honor, have you made a determination?

THE COURT: Yes, I have decided this testimony comes in as to what this witness did regarding getting the auction sale out in Rocky Mountain.

Mr. Arkin said in the pre-trial hearing that the defense was going to prove that there was an actual resale market in Albuquerque at the time so, therefore, I am going to let this in.

MS. HYNES: Thank you, your Honor.

(In open court; jury present.)

ANN GREENBERG, resumed.

MS. HYNES: May I proceed, your Honor?

THE COURT: You may.

DIRECT EXAMINATION (Continued)

BY MS. HYNES:

Q Mrs. Greenberg, when we broke for lunch I was asking you if you had tried to resell your property at Rio Rancho other than listing with the brokers in Albuquerque.

A Yes.

Q You testified about an auction. What did you do?

A I did two different things, I don't remember which I did first.

Q Remember to keep your voice up.

A I don't remember which I did first, whether it was the auction or the other thing.

Q Tell us about the auction.

A The auction was on property that was put up for auction by this particular company and they indicated that Rio Rancho property was among those that are usually put up for auction and whether we would be interested.

Q What time are you talking about, when did this take place, this auction?

A I don't know the exact time. About a year or so ago.

Q A year ago?

A Yes, I don't remember the exact date. About a year or so ago.

Q Approximately as of a year ago, did you own outright any property at Rio Rancho?

A Not a year ago. I think the last piece of property was finished being paid for during the past summer.

Q But your property in unit 2, had you paid that in full?

A Yes, it was paid in full. I believe it was within the last couple of months, about maybe July or May or June or something like that.

Q I will take them one at a time. You had purchased your property, an acre, in unit 2. Do you recall when you paid that in full, when that was paid up?

A Sometime around the summertime.

Q Let me show you a document --

MS. HYNES: Let me mark it first. May I have this marked Government Exhibit 1320 for identification.

XXX (Government's Exhibit 1320 marked for identification.)

Q Showing you Government Exhibit 1320 for identification, does that refresh your recollection as to when you paid in full your property in unit 2?

A When it was paid off? I don't remember, but I believe it was in the summertime.

Q Do you recognize what Government Exhibit 1320 for identification is?

A This is not the one. I thought you were talking about the one that was in unit 25.

Q No, unit 2.

A Oh, I thought you meant the other one.

Q Unit 2?

A That I don't remember, it took a copule of years, I can't tell you exactly anyway. That's the first piece of property.

Q Listen to my questions. I am referring you to this document which has been marked 1320. Do you recognize thi[illegible]?

A Oh, yes.

Q What is it?

A This is the first piece of property that I bought.

Q Is this a deed for that piece of property?

A The first one, yes.

MS. HYNES: Let me offer it.

MR. FLEMING: No objection.

MR. ARKIN: No objection.

XX (Government's Exhibit 1320 received in evidence.)

MS. HYNES: Mark this 1321.

XX (Government's Exhibit 1321 marked for identification.)

MS. HYNES: This will be 1322.

X (Government's Exhibit 1322 marked for identification.)

Q Mrs. Greenberg, I am going to show you what has been marked Government Exhibit 1321 for identification and ask if you can identify that.

A Yes.

Q What is that?

A That's the multiple dwelling property.

Q Is that the deed for your multiple dwelling property?

A Right.

MS. HYNES: I will offer 1321.

MR. ARKIN: No objection.

MS. THOMPSON: Is there a date on it?

MS. HYNES: The date is February 11, 1971.

XXX (Government's Exhibit 1321 received in evidence.)

Q I am going to show you a document that has been marked 1322 for identification. Do you recognize that document?

A Yes. That's the last piece of property that we bought.

MS. HYNES: We will offer this.

MR. ARKIN: That's a deed, too.

MS. HYNES: That's a deed.

MR. ARKIN: No objection.

XXX (Government's Exhibit 1322 received in evidence.)

MS. HYNES: Your Honor, may I just read parts of these exhibits in evidence?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibits 1320, 21 and 22 in evidence to the jury.)

Q Mrs. Greenberg, was that the acre parcel -- the first parcel you bought in 1966?

A Yes.

(Ms. Hynes continued reading from Government Exhibits 1321 and 22 in evidence to the jury.)

Q Mrs. Greenberg, was this the commercial property that you bought in 1967?

A Yes.

(Ms. Hynes read from Government's Exhibit 1322 in evidence to the jury.)

Q Mrs. Greenberg, this deed, dated April 1976, that's for the lots --

A That's right, for the luxury houses.

Q That's what you bought in 1971?

A Right.

Q I am going to direct your attention again to the auction. Did you list any of your lots with that auction?

A We did with that auction.

Q What happened?

A We listed all three. After the auction -- we had to send them a check for $15 for registering the lots --

THE COURT: When was this auction to take place?

THE WITNESS: After the auction we were notified -

Q Mrs. Greenberg, the Judge has a question for you.

THE COURT: When did the auction take place?

THE WITNESS: I don't remember the exact date.

THE COURT: Roughly.

THE WITNESS: Last year sometime. I probably have the records at home. I don't have them with me.

THE COURT: By last year, you mean sometime in 1975?

THE WITNESS: Do I have it there? I might have, I don't remember.

(Pause.)

Q Mrs. Greenberg, did you get more than one notice for an auction held by this company that you referred to?

A After it was held they wrote to us again, but we didn't do it another time.

Q You did list your lots for the first auction that they held?

A Yes.

Q Then they wrote to you a second time?

A Yes, for the next year. Evidently they do it every once in a while.

MS. HYNES: Let me have this marked Government Exhibit 1324 for identification.

XXX

(Government Exhibit 1324 marked for identification.)

Q Mrs. Greenberg, I am showing you Government Exhibit 1324 for identification and referring you to the first paragraph. Let me ask you if on reading that does that refresh your recollection -- wait, let me ask the question -- does that refresh your recollection as to when the auction was held where you listed your property?

A Yes.

Q When was that auction held?

A August 1975.

MS. HYNES: Thank you.

(Continued on next page.)

Q Was your property sold at that auction?

A No.

Q Do you still have the property that you purchased at Rio Rancho Estates?

A Right, yes.

Q Approximately how much have you paid in total for the property?

A Roughly between 12 and $13,000.

Q Mrs. Greenberg, at that time that you attended the dinners where you purchased the property, your various pieces of property, let me take the first dinner in 1966, was anything said to you about how much land still remained to be sold at Rio Rancho?

A Yes, they indicated that there wasn't that much left and the point was to buy it now.

Q When you attended the dinner in 1968 and bought another piece of property, was anything said at that time about how much land was left at Rio Rancho Estates to sell?

A Not much left. When we discussed it there was not that much left.

Q In 1971 when you bought a piece of property what was said about how much land was left?

A I don't believe it was mentioned then at all.

Q When you purchased your acre in 1966 in Unit 2, did you receive insurance on that piece of property?

A Yes, I believe it was discussed, yes.

Q Did you obtain insurance on that piece of property from the company?

A It was considered part of the contract. That is my understanding, if I remember correctly.

Q Was that a part of the contract --

A If I remember correctly, it was.

Q Was that a part of the contract for the other pieces of property thatyou bought in 1968 and 1971?

A I don't remember.

MS. HYNES: Your Honor, I have no further questions for this witness.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mrs. Greenberg, my name is Peter Fleming. Can you hear me all right?

A You don't speak as loud as she does.

Q She is a woman and I am a man.

A Yes.

Q Is this okay?

A Yes.

Q My name is Peter Fleming and I am one of the attorneys for the defendants, okay?

A Yes.

Q You just testified that in 1966 and I guess in 1967 you were told that there was not much land left at Rio Rancho?

A Right.

Q Was that Mr. Stasiewicz that told you that?

A Was that what?

Q What was the salesman's name, your salesman's name?

A I don't know what you mean.

Q You were at a table in 1966 when you purchased your first land.

A Right.

Q There were other couples at that table, is that right?

A Right.

Q And then there was a salesman there. There was someone that spoke to you about the property.

A Just so much land that they had to sell, yes.

Q Was there a salesman at the table, sitting at the table with you at dinner?

A It wasn't always brought up.

Q I am sorry.

A It wasn't always brought up.

Q Excuse me, it is my fault.

When you were at dinner in 1966.

A Yes.

Q You were at a table having dinner?

A Right.

Q Was there a salesman for Rio Rancho at that table?

A Yes.

Q What was his name?

A Stasiewicz.

Q Was it Mr. Stasiewicz who told you that there wasn't much property left?

A Right.

Q Was it Mr. Stasiewicz who told you that at the later dinner?

A Yes, it was mentioned every now and then, yes.

Q By Mr. Stasiewicz?

A By Mr. Stasiewicz.

Q When you listed your property for sale, let's take the auction --

A Yes

Q Did you place a price on it that you wanted?

A Yes. I don't remember what I did, but I did. We listed all three with them.

Q Do you remember what price you placed on your property?

A I don't remember. It is probably written dwn somewhere.

Q Was the price you placed on the property higher than the price you had paid for it?

A I don't remember. I don't remember. I don't remember exactly.

Q Then you don't remember whether it was lower than the price you paid for it?

A I don't remember either. I really don't.

Q When you listed your property for sale with brokers in Albuquerque, did you list --

A I don't know what you mean.

Q Did you write a letter to brokers in Albuquerque about selling your land?

A Yes.

Q Did you allow them to list your land for sale?

A Yes.

Q Did you place a price on your land?

A I am trying to remember. The only people -- the two people who answered me and now I don't remember.

Honestly, I really don't remember.

Q Do you remember if -- forgetting what the price was -- do you remember if you placed a price that you wanted, if you told him what price you wanted?

A No.

Q You don't remember that?

A I don't have a copy of the letter I sent to them after they said they were interested.

Q You do remember what was said to you in 1966 by Mr. Stasiewicz?

A Yes.

Q And you also remember the film that you saw in 1966?

A Yes.

Q Did you testify this morning that on the film there was a retired Army officer or something like that?

A Yes, a retired Colonel.

Q You remember that from 1966?

A In the film, yes.

Q Do either you or your husband have a stock brokerage account? Do you buy or sell stock?

A Do we have any stocks now?

Q Do you own any stocks now?

A Yes, we have a little.

Q Between 1965 and now have you bought and sold stocks?

A The only stock we have been buying is with our reinvestments with AT&T.

Q I am sorry, with what?

A We have reinvestment plan with AT&T with our dividends.

Q So you own AT&T stock and you reinvest your dividends?

A Yes, every once in a while we buy one or two. We don't have very many.

Q Do you have any idea how much AT&T -- that is American Telephone and Telegraph, that is the telephone company?

A Yes.

Q Do you recall what American Telephone Stock was worth in 1966?

A I don't know if we had it in 1966. That I cannot tell you.

Q When you first bought it do you remember what you paid for it?

A It was 53 or something like that.

Q Is it about the same price now?

A It is about 60 now.

Q 60 now?

A Yes.

Q Have you owned any other stocks during that period of time?

A We have some Long Island Lighting, about 45, it is worth about $17, less than $1,000. We have a reinvestment plan with our dividends.

Q When did you buy the Long Island stock?

A Not much difference from that. Not much difference from the 17. Maybe it was about 15 or something like that.

Q About the same?

A It hasn't changed that much.

Q When did you buy it, about ten years ago?

A We bought that -- I cannot tell you exactly when we bought it either.

Q Do you own any other stock?

A We have some funds.

Q Mutual funds?

A Yes, but not that much either on that.

Q When did you first buy mutual funds?

A I think it was before we bought the Rio Rancho.

Q Before Rio Rancho it wouldhave been sometime before 1966?

A I think so.

Q Now, did you lose a lot of money on those mutual funds?

A We still have them. No, no.

Q Do you recall --

A No, so far we still have them and we haven't lost any money.

Q You didn't sell them?

A We didn't sell them. We still have them.

Q Do you recall what price you paid for the mutual funds before 1966?

A For our funds?

Q Yes.

Q When we bought, if I had known I would be asked these questions, I would have brought them, I am trying to remember, we were paying it out by month and it came to about $3,000 and was all paid for.

Now I imagine it is worth about 35, 36, something like that at current prices, if I remember correctly.

Q You think it is worth more today than it was when you bought it before 1966?

A Yes, it is worth a little more than what we paid.

Q So you paid $500 on it to your recollection over the last ten or eleven years?

A What was that, on the what?

Q On the mutual funds to your best recollection--

A Yes.

Q Without your records, you have made about $500 on the mutual funds --

THE COURT: If she sold them today.

Q If you sold them today you would make $500 on your investment?

A I think so. I haven't looked at it lately, but I imagine.

Q During the last ten years have you followed, in other words followed what the stock market was doing?

A Every now and then, but we haven't bought anything for years.

Q Do you know what the Dow Jones Industrial Average is?

A Two funds and those two stocks, AT&T and Long Island, that is all we have.

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Q Have you ever heard of the Dow Jones Industrial Average in the stock market?

A I look at it now and then.

Q Do you remember that the Dow Jones Industrial Average back in or about 1966 --

A Was probably more than now? I don't know. I don't remember that far back.

Q Would it refresh your recollection that the Dow Jones Average of stocks at that time was in the neighborhood of 900 to 1,000?

MS. HYNES: Objection, your Honor.

THE COURT: Overruled.

A I think a couple of years ago it was.

Q Let me ask this question:

Did you follow the stock market enough --

A I don't follow it that closely.

Q I know. But did you follow it closely enough over the last ten years to notice that the Dow Jones Industrial Average went down from a thousand into the 500's?

A I don't remember the 500, no.

Q Do you remember it went way down?

A I know -- I know it does go down periodically, yes.

Q Do you know in the last ten years there was a period when it went way down?

A It might have, but I wasn't -- I wasn't paying that much attention.

Q As a matter of fact, hasn't your American Telephone stock, from the time you bought it, gone up and down?

A It goes up and down.

Q And at times it has been below the price you bought it at?

A But I don't think it's ever been lower than what I paid for it.

Q You don't think so?

A Since I've had it.

Q All right.

Do you own other land besides Rio Rancho?

A We have some country property.

Q Country property?

A In New Jersey.

Q In New Jersey?

A Yes.

Q And how many acres do you own in New Jersey?

A When?

Q How many acres?

A It's -- it's -- it's not a big piece. It's -- I don't think it's even an acre.

Q Where is it?

A In Parlin, New Jersey.

Q When did you buy it?

A Very long time ago. In 1957, I believe.

Q How did you come to buy it?

A How?

Q From whom did you buy it?

A We were living in an apartment house on the fifth floor and we had a little baby and we wanted some place where she could run around.

Q Do you have a house on that propery now?

A At that time?

Q At that time you had a house on it?

A At that time.

The following year we bought the house, and it's in the suburbs, and we didn't need that country any more because she had it, so we never built on it.

Q How much did you pay for that land at that time?

A I think about $1800.

Q Have you attempted to resell that land?

A No, we haven't.

Q What do you think --

A We thought at first we would, but then we didn't continue.

Q What do you think that land is worth today?

A I have no idea.

Q Do you think it's worth more or less than $1800?

A Well, it should be worth more, but I wouldn't know. I don't know.

Q You bought that land --

A We haven't been there for a long time.

Q You bought that land about 20 years ago?

A What was that?

Q You bought that land about 20 years ago?

A But we bought it for a country house.

Q I understand.

A Right.

Q Do you have a country house or is that where you are living now?

A Well, where we live is rather countrified because it's in the suburbs in comparison to apartment houses.

Q Do you own your property, the house and the land?

A Well, we have a house now, yes.

Q And do you own the house and the land on it? I guess maybe you have to.

A Yes. It's a small piece of property. It's 40 by 100.

Q 40 by 100 with a house?

A Yes.

Q When did you buy that?

A We bought it in October of 1958.

Q How much did you pay for it?

A 16, 5.

Q 16,500?

A (Nodding head.)

Q What is it worth today?

A Well, I don't recally -- I can guess, because we have put about $10,000 worth of improvements on it.

We probably could get 35, 40 for it now.

Q 35 or 40. So you paid 16,500 -- did you pay that in cash or did you get a mortgage?

A What was that?

Q When you bought it, did you pay for it all at once or did you have a mortgage?

A We took over somebody else's mortgage.

Q I see.

And then you paid $16,500 plus the interest --

A Yes. We took over their mortgage, which was about 7,000, something like that, 8,000 at the time.

Q You paid interest on that mortgage until it was paid off?

A We finished paying it off, yes.

Q And then you put $10,000 into the house itself?

A Yeah. I think we finished paying it off a year or two ago.

Q Okay.

And you believe it is probably worth about 35, $40,000?

A I think so. At these prices now, yes, probably.

Q Where is that located?

A It's in Queens on the Queens side. It's considered, really, Bellrose Manor, but the Post Office is New Hyde Park.

It's the city.

Q Okay. It's the city. So that in 18 years, between 1958 and 1976, in your opinion, what cost you 25 or $6,000, including the improvements and the interest, has gone up in price about 10 or $12,000, is that fair, in value, not in price?

A Are you talking about the house itself?

Q The property, yes.

A Yes, probably, yes.

Q You bought Rio Rancho land in 1966, did you testify; Is that right, 1966?

They have to write it down.

A What was that?

Q Did you buy Rio Rancho land for the first time in 1966?

A Yes. April of 1966.

Q Then you bought more Rio Rancho land --

A In '67.

Q In 1967.

A And 1968.

Q And 1968.

A Then in 1971.

Q 1971.

MR. FLEMING: May I have the 1971 contract?

MS. HYNES: Yes (handing).

Q Mrs. Greenberg, this is the 1971 contract (handing).

A Right, yes.

Q And it is initialed right here, "We acknowledge receipt of copies of the restrictive covenants, the property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development, and any applicable public report, offering statement or prospectus required by state authority," is that right?

A That's right.

Q You did receive those documents when you bought this land?

A Yes.

Q And this is dated November 14, 1971?

A That's right.

MR. FLEMING: May I have both of these marked, please.

XX

(Defendants Chester Carity and Daniel Friedman Exhibits AN and AO, respectively, marked for identification.)

Q I take it you read those documents after you received them?

A What was that?

Q You read the documents after you received them about the property?

A Yeah.

Q Let me show you what has been marked Exhibit AN (handing).

I will ask you if you recognize that as a copy of what you received in 1971.

A Well, this is 1971. I may not have this particular one, because I don't think I would have one for 1971.

Q This contract is November 14, 1971.

A Yes.

Q And this -- well, I direct your attention to this date and the date November 14, 1971.

A Yes, but I don't think I had this, this particular one, at the time I bought that.

If I had this at all, it was probably when I first bought the property. The date would not have been 1971.

I think this wasn't given to me at the time.

Q Would you read that paragraph --

A Yeah, but I don't remember this one with this date.

I remember something like this, but not the one with this date. I don't -- I couldn't have had one with this date.

Q Let me just ask you --

A In other words, when I bought this, I don't think this was handed to me.

Q What did you receive with these initials?

A I don't remember this, I really don't.

If I was given something, I don't remember that it was this.

I may have, but I don't remember it.

I'd have to check at home.

Q How do you know you don't remember? I mean, how how do you know you didn't receive that?

A I may have -- I didn't remember the date, but it's very possible that I got it. I just didn't remember this particular date. But I remember receiving a statement like this. I do remember that.

Q On November 14, 1971?

A Yes.

Q And do you recall receiving a statement like this, which is marked AO for identification (handing)?

A Yeah.

I have to take my glasses off to read this.

(Pause.)

A This doesn't look familiar to me, but -- are you -- this is reproduced in small print. It's not familiar to me when I look at it this way.

If It is a reproduction of something I am more familiar with I may be able to recognize it.

I remember seeing something like this. I just didn't remember it had that date on it, but it's very possible that it did.

Q All right.

A And if I have it I probably have it at home.

Q I will ask you if you remember receiving property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

A I don't remember this.

Q You did initial this, though?

A This I don't remember.

Q But you did initial that you did receive it?

A Well, I don't -- I'm telling you, I don't remember it.

Q I understand. But --

A This is unfamiliar to me.

This is familiar to me, but not this.

Q All right.

But the initials, do you remember that? Do you remember the contract and signing for it?

A And is this supposed to be what I signed having received?

I don't remember this.

(Continued on next page.)

Q I am just asking you if you initialed it.

A Well, I don't remember it.

Q No, no.

Did you initial it?

A Yes, but I'm telling you I don't remember it.

I keep everything at home, but I don't remember ever seeing this in my house.

Q But you do remember something like this?

A This I remember, but not that.

MR.FLEMING: I offer this.

MR. ARKIN: No objection.

MS. HYNES: May I have just one question, your Honor?

THE COURT: All right.

VOIR DIRE EXAMINATION

BY MS. HYNES:

Q Mrs. Greenberg, is it your testimony that you do remember receiving this document?

A I remember receiving it. I don't remember the date, but I remember receiving something like that.

Q Do you know whether --

A I don't remember the other one.

Q Okay.

Do you know when you received this specific document?

A With that particular piece of property? That I can't say.

MS. HYNES: Your Honor, I am going to object.

THE COURT: Overruled.

It has a date on it and it ties in with the contract. She says she initialed the contract and says she received a document like that, although she does not remember the specific date and the form.

I will admit it.

(Defendant Chester Carity and Daniel Friedman Exhibit AN received in evidence) xxx

MR. FLEMING: May I read this to the jury, your Honor?

THE COURT: You may.

(Mr. Fleming read from Defendant Chester Carity and Daniel Friedman Exhibit AN to the jury)

CONTINUED CROSS EXAMINATION

BY MR. FLEMING: XX

Q Would you read Paragraph 5, Mrs. Greenberg, and tell me if you remember reading it back in 1971.

A Yes, I read it. Yeah, I remember.

Q Thank you.

A I remember this.

MR. FLEMING: Do you have Exhibit 1308, Ms. Hynes?

MS. HYNES: Yes (Handing)

Q Mrs. Greenberg, at any time after you purchased your first property at Rio Rancho, did you and Mr. Greenberg consider retiring down to New Mexico at Rio Rancho?

A I don't quite get you. What was that?

Q You bought your first piece of property at Rio Rancho in 1966.

A Right.

Q Since that time, have you and Mr. Greenberg ever considered retiring down to Rio Rancho?

A No, no.

Q Absolutely?

A No.

Q I want to read you Government Exhibit 1308.

That is your letter, is it not? I think you testified about it on direct examination (handing).

A Written in 1972. I remember this.

This was written in later (indicating).

This must be their writing.

Q Probably. I was not there.

And it says, "Dear Mr. Summitholder."

He is at Rio Rancho, right?

A Right.

Q "I have written to the New York office care of your salesman, Mr. Stasiewicz, but have not received any answer. Due to a very serious illness on my part, we will have to forego any further interest in all our property at Rio Rancho Estates. We had a trip planned, but had to cancel it. I will never be able to live anywhere but New York City because I need constant care here, and we must convert all our holdings to cash."

What did you mean when you told Mr. Summitholde that, "I will never be able to live anywhere but New York City"?

A I had a cancer operation. I did not know how -- whether I was going to live when I wrote that letter.

Q Well, I am sorry for that.

A Luckily I did, but I didn't know it then.

Q No, I understand.

But what did you mean when you said, "I will never be able to live anywhere else"?

Did that mean before you wrote this letter intending --

A I wanted to be near my own doctor.

Q In this letter you say, "I will never be able to live anywhere else but New York City."

My question is, does that mean that before you became ill, there was an intention or a thought on your part --

A No, no.

If anything, it would not have been there. If we had planned to move anywhere else, it would not have been there.

Q Now, you knew, when you bought your first piece of property, that you could cancel that purchase if you went down to New Mexico within six months and went on a tour of the property and saw your property and didn't like it.

A Yes.

Q You knew that, did you not?

A When we planned the trip are you talking about?

Q No. I am sorry.

When you bought your first piece of property in 1966, when you bought it, you knew that you could cancel your purchase if you went down to New Mexico within six --

A We never went there, no. We never went, because I didn't want to leave my little girl for that length of time. She was only eleven years old.

Q Did you know that you could cancel your purchase if you went to New Mexico and visited the property and decided you didn't want it?

Did you know that?

I know you didn't go, but I am asking you, did you know that you had that right?

A If -- if, did you say, if I had gone?

THE COURT: Start over again and keep your voice up, Mr. Fleming.

MR. FLEMING: All right, your Honor.

Q When you bought your property in 1966, at the time you bought it, did you know from the contract that you could cancel your contract --

A Yes, yes, yes, I'm saying that, we did, of course we knew that.

Q And you knew that in 1967, is that right?

A Right.

Q And you knew that in 1968 when you bought more property, is that right?

A Yes.

Q And you knew it in 1971?

A Right.

Q And then you scheduled a trip in 1972?

A Right. Within the six month period. That's when we felt we could go.

Q Hadn't you been taking vacations in Florida every winter throughout this period of time?

A We took my little girl with us.

Q Let me ask you:

During the period 1966 through 1972, were you vacationing each winter in Florida?

A Well, we were there once or twice with my little girl.

Q Weren't you going down every winter?

A No. We took her with us.

Q But you would go every winter to Florida?

A Yes, we took her with us, though.

Q I understand.

You could have taken her to New Mexico, too, could you not?

A No, we didn't want to do that, because that to her was not a vacation. She wouldn't have gone with us.

Q Did you testify that your salesman would tell you that the value of your property had gone up? When you see him, he would tell you?

A Yes, yes, we were always told that, yes.

Q Can I ask you very specifically, were you told that the value of your property had gone up?

A Right.

Q Or were you told that the price that Rio Rancho was selling similar property had gone up?

A That we were told, yes, too. That we were told, too.

That we were told in a letter.

Q Isn't that what the salesman told you, Mrs. Greenberg, that the price of similiar property had gone up?

A That I don't remember. That I -- we got that information in a letter.

I can't tell you whether that that's how the salesman himself worded it.

Q Well, it is very important if you give me your best recollection.

Did the salesman tell you that the value of the property had gone up, using that word "value," or did he tell you, as the letter did, that Rio Rancho was selling similar property at a higher price?

A We were told that Rio Rancho was selling similar property at a higher price and we were given the price in a letter.

Q All right.

Did Mr. Stasiewicz, the salesman -- isn't that what he told you, that Rio Rancho was selling similar property at a higher price?

A No. We didn't discuss it that way with him.

We wrote to Rio Rancho because we wanted to know how much we should sell our property for if we got a buyer, and they told us how much the property was wort depending on what property was like it right near it and what they were selling it for.

Q Did Rio Rancho ever offer to allow you to exchange -- I will withdraw that.

Did there come a time when you asked Rio Rancho if they would allow you to exchange your property for a condominium in Florida?

A Yes.

Q And did Rio Rancho tell you that they would allow you to exchange --

A One half of one acre.

Q -- the appreciated value of a half acre.

A Half an acre, yes.

Q Which is the exchange rate you had under your contract if you were to build a home at Rio Rancho?

A I don't know. That letter was not worded like that, but maybe that's what it means, probably. I don't know.

Q When you bought your acre at Rio Rancho, you understood that you could exchange it for a building lot if you wanted to build a house in Rio Rancho?

A Yes.

Q And Rio Rancho offered to give you that same right against a condominium in Silver Shores, Florida, did they not?

A It depen-ed on how it was worded. I am trying to remember how it was worded.

Q Didn't they tell you that they would give you the appreciated value of one half acre of your holdings as against the payment of a condominium in Silver Shores?

A I don't remember them saying anything about appreciating value.

They did say that they would exchange one half of an acre for the property, any property in Florida.

I don't remember the word "appreciated" in the letter.

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Q That was at your request, was it not, you wrote them and said you wanted to retire to Florida?

A It wasn't even a matter of retiring to Florida.

Q You wrote them and told them that you would be interested in their Silver Springs development in Florida?

A I felt that a condominium in Florida would have a better use for me because it was something that maybe I could rent or something, but not for us to live there because I don't think we will ever leave New York.

Q Don't you and Mr. Greenberg, in fact, plan to retire shortly to Florida where all your friends are?

A I don't think we would, but if we did it at all, it would have made more sense to us. I felt an apartment is something you can do something with. Land wasn't.

MR. FLEMING: May I have this marked, please.

X (Defendants Chester Carity and Daniel Friedman Exhibit AP marked for identification.)

THE WITNESS: I remember the letter, but I don't remember every word that I wrote in it.

Q Did your husband ever tell you that he was interviewed by a man named Paul Mann, an investigator representing some of the defendants in this case?

A I don't know what you mean.

Q On or about October -- is this 1976 -- about a month ago, October 27, 1976 did your husband tell you that he had been interviewed in connection with this case by an investigator for the defense?

A I don't understand that.

Q Would you read that to yourself.

(Pause.)

A He doesn't remember very much, my husband.

My husband would like to live in Florida, not me. But anyway my husband doesn't know as much as I do, believe me.

Q That's just what my wife says.

A I am sorry to say, but he has lots of things wrong.

Q Having read that, does it refresh your recollection as to whether you and your husband intend to retire to Florida -- I am sorry, to live in Florida after you retire?

A He would like to.

Q But you would not?

A No.

Q Is it your present joint intention as husband and wife when you retire to live in Florida?

A I said he would like to, but we have no intention as yet.

Q You haven't decided yet?

A No, never. And he had a couple of things wrong there.

Q But, in any event, you did write Rio Rancho and tell them that you were interested in their Silver Springs development and in a condominium in Silver Springs, Florida?

A Yes, because either I could live in it or rent it.

Q I understand. You wrote them that very recently in the last year or so, isn't that right?

A I don't get that. Please repeat that.

Q It's been within the last year or so that you told Rio Rancho that you would be interested in a condominium at the Silver Shores development in Florida, is that right?

A Yes.

Q You wanted to exchange your Rio Rancho property against a condominium at Silver Springs in Florida?

A Yes.

Q They told you that they would allow you to exchange one half acre of your Rio Rancho property against the purchase of a condominium in Florida?

A Right.

Q Isn't that right?

A Yes.

Q You don't know whether they offered you the appreciated value or the purchase value?

A No, I would still have to lay out a lot of money to make up the difference and I didn't want to do that.

Q Didn't they offer you a credit of between 2 and $3,000 on the purchase of a condominimum in Silver Springs if that's what you wanted to do?

A Well, the cheapest was $17,000 and it would mean too much money on my part. Isn't that what you mean?

Q You wanted -- you expressed interest in the condominium, did you not? Did they write to you and say, would you like our condominium?

Didn't you write to them and say you were interested?

A Yes, because I was looking for some sort of solution in getting rid of the New Mexico property.

Q I understand and you said you were interested -- was there also some thought that you may want to live in Florida with your husband, that he might win the argument?

A Not to live in. I would never have lived in Silver Springs Shores.

Q In any event, they offered to allow you to exchange the value of one half acre in New Mexico against a condominium in Silver Springs?

A If they had offered me an even exchange, I would have taken it.

Q My question is they did offer you the value of one half acre in New Mexico against a condominium in Silver Springs, is that right?

A I don't get that. They offered me the value of one half acre and the cheapest property in Florida was $17,000.

MR. FLEMING: I will withdraw the question.

Q When you came down, did you and your husband come down to the office of the prosecutor together back in 1974?

A 1974?

Q Did you come down to this court house and visit with the prosecutors in 1974 or 1975?

A I don't get you.

Q You know Ms. Hynes? Do you know Ms. Hynes?

Mrs. Greenberg -- I can't say that I guess -- I am not trying to trick you.

Do you know Ms. Hynes?

MR. HYNES: Your Honor, I object.

THE COURT: Overruled.

Q Do you know Ms. Hynes?

A Yes.

Q When did you first meet her?

A I don't understand what you are saying.

Q When did you first meet Ms. Hynes?

A I just met her last week.

Q When did you first meet anyone attached to the Department of Justice?

A Two weeks ago. My husband is all wrong there. The first time we spoke to anybody was about two weeks ago and I met her just a few days ago. He had the dates all wrong there. I have never spoken to anybody else.

Q When you first spoke to whomever you spoke to, did they tell you --

A That was two weeks ago.

Q All right. When you spoke to them, did they tell you that Rio Rancho had no roads?

A What was that? I don't get that.

Q Were you here with your husband?

A Yes.

Q Whenever it was.

A Yes.

Q Did anyone from the prosecutor's office tell you that Rio Rancho had no roads?

A I don't remember. I don't remember that.

Q Did anyone from the prosecutor's office tell you that Rio Rancho was all desert?

A I don't remember. I don't remember that.

Q Did anyone tell you from the prosecutor's office that the property had no value?

A I don't remember that it was ever told to me that way, no.

MR. FLEMING: Thank you, Mrs. Greenberg.

THE COURT: Mr. Arkin.

MR. ARKIN: No cross, your Honor.

THE COURT: Redirect.

MS. HYNES: Your Honor, I just have one or two questions.

IX REDIRECT EXAMINATION

BY MS. HYNES:

Q Mrs. Greenberg, Mr. Fleming on his cross examination talked about your getting in touch with AMREP Corporation in connection with their project in Florida called Silver Springs Shores. Do you recall being asked those questions about the condominium?

A Yes, I worte and asked them if we could exchange.

Q What did you ask to exchange? What property did you ask to exchange for a condominium?

A I wanted to exchange all of the property --

THE COURT: No, wait.

A I wanted to exchange --

THE COURT: Wait. What did you put in the letter?

THE WITNESS: That's what I was saying.

THE COURT: What did you say in the letter?

THE WITNESS: Well, I can't tell you because I don't have the letter in front of me, but if I remember what I said, I wanted it to be an exchange because I figured that that was approximately the price of what the cheapest property was in Florida at the time. I saw their advertisement in a newspaper so I knew the prices in Florida.

Q When you say even exchange, you wanted to exchange all of your property --

A Yes, I felt it was an even exchange.

Q For a condominium in Silver Springs Shores?

A Right.

Q They wrote back to you and said you could only exchange one half acre?

A One half acre. That would be too much money on my part to make up the difference.

MS. HYNES: I have no further questions.

THE COURT: You may step down.

Thank you.

(Witness excused.)

THE COURT: Next witness.

(Continued on next page.)

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MS. HYNES: The government calls David Jones.

DAVID JONES, called as a witness by the Government, being first duly sworn, was examined and testified as follows:

THE COURT: You may proceed.

MS. HYNES: Thank you, your Honor

DIRECT EXAMINATION

XXX BY MS. HYNES:

Q Mr. Jones, I am going to ask you to keep your voice up so all of the jurors can hear the answers to my questions, okay.

Where do you live?

A 140-21 Queens Boulevard.

Q Where is that?

A That is Jamaica, Long Island.

Q How long have you lived there?

A Ten years.

Q How old are you?

A Forty-four years old.

Q Do you have a family?

A Yes.

Q How many are in your family?

A Two boys, two girls.

Q Do you have a wife?

A Of course.

Q Are you employed?

A Yes.

Q What is your employment, what do you do for a living?

A Well, at the present time I am a contractor.

Q What do you mean by "a contractor"?

A A general contractor. I do home repairs.

Q Did you buy lots at Rio Rancho Estates?

A I have bought lots there, yes.

Q How did you first learn about Rio Rancho Estates?

A Through the mail.

Q What did you receive in the mail?

A An invitation to go to a dinner.

Q Did you go to the dinner?

A Yes.

Q Do you recall where the dinner was held?

A Not at this particular time it's been so long ago.

Q Was it in the New York area?

A It was in the New York area, yes.

Q Can you tell the Judge and the jury what happened when you arrived at that dinner and tell us, first, approximately when that dinner took place, what year?

A In 1969 I think it was.

Q When you arrived at the dinner, can you tell us what happened as best you recall?

A When I arrived at the dinner I saw films of Rio Rancho Estates and I also saw slides.

After that there was a speaker that spoke about the properties and of what values they were worth. Promotion, that is what it was.

Q Were you seated at a table with other people?

A Yes, I was.

Q Did your wife accompany you at that dinner?

A Yes, she did.

Q Was a salesman at the table?

A He was.

Q Do you recall what the salesman's name was?

A Mr. Ronald Stasiewicz.

Q Do you recall what the speaker said in the front of the room? You said there was a speaker in the front of the room.

A Yes, he spoke about the growth of Albuquerque, New Mexico and how it was a booming possibility to invest in land. That is the best I could tell you.

Q Did the speaker say anything about the growth of Albuquerque in relation to Rio Rancho Estates?

MR. FLEMING: Objection, your Honor.

THE COURT: Overruled. You can answer.

A That Rio Rancho Estates held a great deal of promise for those that were interested in investing in land and that the population growth was growing at a very rapid rate.

Q Was anything said about the direction of the growth?

A It was my thinking that all of the direction of the growth --

THE COURT: Wait, wait. Not what your thinking was. What you were told.

A What I was told is that the expansion of the Albuquerque area in which I was buying the property could only be expanded in this direction.

Q Did you buy property that night?

A Yes, I did.

Q Do you recall how much property you bought?

A I think about an acre or something of that sort. A very small plot to start with.

Q What was your reason for buying the property that night?

A The reason for it was to secure some sort of monies for the future of my children.

Q How old were your children in 1969?

A Very young.

Q How old are your children today?

A Eleven, twelve and thirteen.

Q I am going to show you what has been marked Government Exhibit 146-N.

Do you recognize this?

A Yes, I recognize it.

Q Is your signature on this document?

A That is my signature and my wife's.

Q Is this the contract for your original purchase?

A Yes, that is.

MS. HYNES: The government will offer 146-N.

MR. ARKIN: No objection.

(Government Exhibit 146-N received in evidence) xxx

MS. HYNES: Your Honor, may I read from a portion of this?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 146-N in evidence to the jury)

Q Mr. Jones, do you recall whether the speaker at the dinner that you attended in May of 1969 said anything or made any comparisons between an investment in land and any other type of investment?

A Certainly.

Q What was said?

A I was hearing things like, investments in land had a lot more to offer even than interest from a bank.

Q Apart from a bank -- I am sorry.

A That the property values were moving at such a rapid rate it was a good thing to be in on.

Q Apart from a comparison to interest rates in a bank, was there a comparison to any other type of investment?

MR. FLEMING: Object to the leading form of the question.

THE COURT: Overruled.

Q Was there a comparison to any other type of investment between real estate and any other type of investment?

A There was made mention of some, but I couldn't tell you exactly what they were at this particular time.

Q Were there any charts used in the front of the room by the speaker, if you recall?

A Yes.

Q Do you recall what those charts were?

A The charts showed a map of Albuquerque and the possibility of the expansion and it showed the areas in which the only movement for growth for that particular area was in the direction of Rio Rancho Estates.

Q Was there any chart in connection with comparis of different types of investment?

A None that I could remember.

Q When you purchased this one and a half acres in 1969, did you intend to relocate at Rio Rancho?

A It was an idea at one time, but I had no real intentions to move there.

MR. FLEMING: If your Honor please, I though the question was his state of mind at the time he purchased.

THE COURT: That is right, that is the question being put to you.

MR. FLEMING: I ask the answer be stricken.

THE COURT: Strike the answer.

Q Mr. Jones, my question is at the time that you purchased the land on May 23, 1969, the acre and a half, did you have any intention of relocating to Rio Rancho Estates at that time?

A No.

Q At the end of the sales presentation at the dinner that you attended in May of 1969, what, if anything, do you recall happened then?

A Well, immediately after the dinner there was suddenly several bids for lots and I too took a bid as well. I spoke to the representative and took a lot.

Q Can you describe what you mean by a bid for lots?

A Well, they had a price list there to show you the acreage and the price for it per month and whatever.

I selected one within reason that I thought I could deal with financially and I bought it.

Q At the time that you purchased your property in May of 1969 what, if anything, was said to you about how much of Rio Rancho had already been sold out?

A A considerable amount.

Q What, if anything, was said to you about resale of the lots at Rio Rancho that you were purchasing?

A That after the properties that they were now holding were sold out, that Rio Rancho Estates would resell your property for you, at any given time.

Q Was that statmeent made by the speaker in the front of the room?

A No, that statement was made by Ronald Stasiewic

Q Did the speaker in the front of the room make any similar statement that you recall?

A The only statement that might come close to that is that if I was dissatisfied with the property after six months, that without any ifs or ands I would get my money back.

Q I show you Government Exhibit 146-N in evidence and refer you to the middle of the first page where it says:

"We acknowledge receipt of copies of restrictive covenants, property reports filed with the Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development, and any applicable public report, offering statement or prospectus required by the state authorities."

Do your initials appear next to that paragraph?

A Yes, it does.

Q Do you recall whether you received the reports that are mentioned in that paragraph of that exhibit?

A I didn't receive any reports on anything prior to this.

THE COURT: Prior to it?

Q Prior to what?

A Signing the contract.

Q After you signed the contract did you receive any reports?

A I received a lot of literature.

Q Do you recall whether these reports were included in that literature?

A They could have very possibly have been.

Q You have turned over to the government document that you received at the dinner, is that correct?

A Yes.

Q I am going to show you what has been marked Government Exhibit 146-S and 146-T.

Do you recognize those documents?

A Yes, they were sent to me in the mail.

Q Were these sent to you in the mail --

A I might have received these either at the time of the dinner before I left or they came in the mail because a great deal of literature came from Rio Rancho Estates.

Q But at this time you really don't recall when you received it?

A Not really.

MS. HYNES: The government will offer 146-S and T.

MR. ARKIN: No objection.

xx (Government Exhibits 146-S and 146-T received in evidence)

MS. HYNES: Your Honor, I will ask at the time the jury takes a recess if this can be given to them to look at.

THE COURT: The whole thing?

MS. HYNES: These two exhibits.

THE COURT: I won't give them that. You pick out what you want them to look at.

Go on to the next question.

Q Mr. Jones, did there come a time when you attended a second dinner for Rio Rancho Estates?

A Yes.

Q Did there come a time when you bought a second piece of property at Rio Rancho Estates?

A Yes, I did.

Q Do you recall approximately when that was?

A Not specifically, but it was not too far after I bought the first property.

Q I show youGovernment Exhibit 146-O and ask you if you can identify that. Is that your signature?

A Yes, that is my signature.

Q Is this a contract for a second piece of property that you purchased?

A Yes, it is.

MS. HYNES: The government offers 146-O.

MR. ARKIN: No objection.

(Government Exhibit 1460-O received in evidence)

MS. HYNES: Your Honor, may I read from a portion of this exhibit?

THE COURT: Yes.

(Ms. Hynes read from 146-O in evidence to the jury)

Q Mr. Jones, at the dinner that you attended in November of 1969 when you bought this additional one and a half acres, who was your salesman?

A Mr. Ronald Stasiewicz.

Q That was the same salesman who sold you the original one and a half acres?

A The very same.

Q When you attended the dinner in November of 1969 and bought your additional property, was anything said to you about increased value of your prior investment?

A Yes.

Q What was said to you and by whom?

A Mr. Stasiewicz put some figures down to show me the increase of the valuation of the property.

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T4pm

Q And did Mr. Stasiewicz refer to anything in putting these figures down on paper for you?

A Nothing that I could tell you.

Q Did he show you any price list for the property that you had previously purchased?

A A price list?

I don't quite understand that.

Q Were you ever shown a price list for property at Rio Rancho Estates?

A Yes.

Q And at the dinners that you attended after you originally purchased your property, were you shown price lists for Rio Rancho Estates property?

A Yes.

Q Were you shown price lists for property comparable to the property that you had purchased?

A No.

Q In 1969, when you were purchasing this property, was your wife employed?

A No.

Q Approximately how much were you earning?

A Well, it was indeterminate.

Q Well, roughly, do you recall how much you were earning in 1969?

A Somewhere in the neighborhood of ten and twelve.

Q Ten and $12,000?

A Yes.

Q The dinner that you attended in November 1969, how did that compare in format and content with the dinner that you had previously attended in May of 1969?

A There hadn't been any great big changes as far as the presentation was concerned, except to say that there were a lot of happy buyers. People seemed to have a lot of high spirits about the property and all, and enthusiasm, you know, sort of got around to everyone, I guess.

Q Did the speaker in the front of the room make substantially the same presentation at the second dinner that you attended?

MR. ARKIN: If your Honor please, that is a leading question.

THE COURT: Overruled.

A The speaker had spoke of different things that had taken place at Rio Rancho Estates, such as theatres being, you know, in the progress of being erected, certain sorts of facilities and swimming pools and quite a few other things.

Q Did the speaker at the second dinner talk about the growth of Albuquerque?

A Always.

Q And did the speaker at the second dinner talk about the direction of the growth of Albuquerque?

A In the direction of Rio Rancho Estates.

Q Did the speaker at the second dinner talk about the investment value of property at Rio Rancho Estates?

A That it was on the uprise and steady moving.

Q When you bought your second acre and a half in November of 1969, what was the reason for that purchase?

A I was trying to get in on what I thought was a good deal.

Q And in November of 1969, when you bought your second acre and a half, did you intend to move to Rio Rancho Estates?

A I have no intentions of moving to Rio Rancho Estates.

Q What improvements, if any, did you believe the company would make to the property that you were purchasing?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Jones, you said that you saw the films or you saw films at the sales dinner, is that correct?

A Yes.

Q And what do you recall about the films that you saw at those sales dinners?

MR. ARKIN: Objection. They are in evidence, your Honor.

THE COURT: He can now say against what the content was what he expected. It would be for the jury to determine whether he had the right to make that expectation or not.

A I saw movies showing me about a new bridge that would make it much more easily to even get back and forth from the Rio Rancho area into Albuquerque itself.

Q Do you recall anything else about the film?

A It seems like a lot of traffic was moving.

Q Do you recall anything in the film about the Rio Rancho property itself?

A Well, I saw pictures of the governor standing there. He looked like, you know, he was with it.

Q Do you recall whether they showed you pictures of who was at Rio Rancho?

A I saw families with smiles bigger than you can imagine.

Q Based upon what you saw in the films, what improvements, if any, did you expect to be made to your property?

MR. ARKIN: Objection.

THE COURT: Sustained.

A I expected --

THE COURT: Wait. I sustained the objection.

Q Mr. Jones, did you ever visit Rio Rancho Estates?

A No, I did not.

Q I am going to show you Government Exhibit 146-C and ask you if your signature appears on that document (handing).

A Yes, that's my signature.

MS. HYNES: The government will offer 146-C.

MR. ARISOHN: No objection, your Honor.

(Government Exhibit 146-C received in evidence)

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MS. HYNES: May I read from 146-C, your Honor?

THE COURT: Yes.

(Ms. Hynes read from 146-C in evidence to the jury)

Q Mr. Jones, did there come a time when you had difficulties meeting your payments on this property that you purchased at Rio Rancho Estates?

A I certainly did.

Q I show you Government Exhibit 146-M and 146-J.

(Handing)

Do you recognize those?

A Yes, I recognize these.

Q Are those letters that you received from the company?

A These are company letters, yes.

MS. HYNES: The government will offer 146-M and J.

MR. ARISOHN: No objection, your Honor.

(Government Exhibits 146-J and 146-M, respectively, received in evidence)

MS. HYNES: Your Honor, may I read from these exhibits?

THE COURT: Yes.

(Ms. Hynes read from Government Exhibit 146-M in evidence to the jury)

(Ms. Hynes read from Government Exhibit 146-J in evidence to the jury)

THE COURT: We will have a recess.

(Recess)

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(In open court; jury present.)

MS. HYNES: May I proceed, your Honor?

THE COURT: Yes.

BY MS. HYNES:

Q Mr. Jones, you mentioned, I believe, that you were told that you could get your money back in six months with no if's, and's or but's. Do you recall testifying to that?

A Yes, I do.

Q Who told you that?

A As a matter of fact, that was said even in the presentation. That if for any reason you were dissatisfied with the properties of Rio Rancho, you could get your money back in full within six months.

Q Did the speaker tell you at the dinner that you had to visit the property in order to get your money back within six months?

A If he did, I definitely had no understanding of that kind.

Q When you purchased your property in May and November of 1969, what, if anything, was said to you about how much of Rio Rancho had already been sold?

A From what I understand between 80 and 90 per cent of the properties had already been sold.

Q Who told you that?

A Mr. Stasiewicz.

Q Did Mr. Stasiewicz tell you anything about what would happen after all of the property was sold out?

MR. ARKIN: This has been asked and answered already, your Honor.

THE COURT: Sustained.

Q After you made your second purchase in 1969, did you attend other dinners?

A Yes.

Q Do you recall approximately how many other dinners you attended?

A At least five or six.

Q Did there come a time in 1973 when you purchased additional property?

THE COURT: When?

MS. HYNES: 1973.

A I believe so.

Q Let me show you Government Exhibit 146-P and ask you if you can identify that.

A Yes.

Q What is this?

A This was -- they transferred the properties from one to another. From one location to another.

MS. HYNES: I am sorry, I misspoke myself.

Q This is a property exchange amendment, is that correct?

A Yes.

Q So in 1973 you exchanged property?

A Yes.

Q You did not buy additional property, is that correct?

A No.

MR. ARKIN: I take it you are offering this, Ms. Hynes?

MS. HYNES: Yes.

MR. ARKIN: 146-P.

We have no objection to 146-P.

XXX (Government's Exhibit 146-P received in evidence.)

MS. HYNES: May I read from a part of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 146-P in evidence to the jury.)

Q Do you recall what the monthly payments were on this, Mr. Jones?

A I believe it was $25.

Q At the bottom of 146-P it says "representative

Stasiewicz." Was that your sales person?

A Yes.

Q Did you arrange this transaction through Mr. Stasiewicz?

A Yes.

Q Can you tell the court and the jury what this property exchange was; why did you exchange your property in unit 8 for property in unit 21?

A It got behind in the payments, as I recall. Rather than to lose the moneys, they suggested to me to invest the moneys into another plot and pay a lesser amount of money per month.

Q And you did that?

A Yes.

Q So you took the lot that you bought in unit 8, and that was the lot that you first purchased in May of 1969, is that right?

A Yes.

Q And you traded that for a lot in unit 21?

A Yes.

Q And a less expensive lot?

A Yes.

Q And the monthly payments were lower?

A Yes.

Q Did you keep the lot, the acre and a half that you bought in unit 13 when you bought it on November 12, 1969, did you keep up the payments on that?

A Yes, I did.

Q I show you Government Exhibit 146-Z. Do you recognize this?

A Yes.

Q What is it?

A It's a pay envelope that you send with your monthly payments.

MS. HYNES: I offer this in evidence.

MR. ARKIN: Excuse me, if your Honor please, this seems to be a blank, unused envelope. I see no relevance to it coming in.

THE COURT: Sustained.

Q Mr. Jones, did you use envelopes similar to 146-Z for identification to make your payments?

A Envelopes like what?

Q Did you make your payments in envelopes similar to this (indicating)?

A I have a load of those envelopes that were sent to me along with payment stubs.

THE COURT: What do you mean by payment stubs?

THE WITNESS: They had numbered by the months to make payments. You simply filled out the amount of moneys, put it into that envelope and mailed it.

Q Did you mail it to a bank in New York?

A Yes.

MS. HYNES: The government offers 146-H.

MR. ARKIN: We have no objection.

XX (Government's Exhibit 146-H received in evidence.)

MS. HYNES: May I read from a part of this, your Honor?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 146-H in evidence to the jury.)

Q Mr. Jones, Government Exhibit 146-H in evidence is a printout dated October 14, 1975. Did you make payments on your property in unit 13 after October 14th of 1975?

A Yes.

Q Do you recall approximately how much you paid on that piece of property to date?

A I am not certain of all the figures.

Q Do you have a rough idea of how much you have paid?

A I think I spent totally somewhere in the neighborhood of a little better than $2,000.

Q When you exchanged your property in unit 8 for property in unit 21, did you attend a dinner?

A Yes.

Q Was that done at a sales dinner?

A Yes.

Q Was Mr. Stasiewicz present at that sales dinner?

A Yes.

Q How did the dinner that you attended in March of '73 compare with the earlier dinners that you attended in 1969?

A They were all basically the same.

MR. ARKIN: Objection, your Honor.

THE COURT: In what regard?

THE WITNESS: Nothing happened different.

THE COURT: What does that mean?

THE WITNESS: You had the same presentation. You saw the movie. You went through the same rhetoric that you went through from the very beginning of it. At the end of it if you wanted to buy or you had any questions, you asked your representative and he answered any questions that you had.

Q After March of 1973, did you attend any other sales dinners for Rio Rancho Estates?

A Yes, I have been to other dinners.

Q When was the last dinner that you attended for Rio Rancho Estates?

A I would say within the last year.

Q Within the last year?

A Yes.

Q Do you recall where that dinner was held?

A It was either the Playboy Club or the Commodore Hotel.

Q Do you recall how that dinner compared in substance and content with the previous dinners that you attended?

MR. ARKIN: Objection, your Honor.

THE COURT: Sustained.

Q The dinner that you attended within the last year, was there a speaker's presentation?

A Yes.

Q Were there movies --

THE COURT: I don't think you understand the objection.

MS. HYNES: What is the objection, your Honor?

THE COURT: The indictment was filed over a year ago.

MS. HYNES: Let me see if I can fix a date, your Honor.

Q Mr. Jones, do you recall approximately the month and the year that you attended this last dinner?

A The year was last year, but the very month I couldn't really remember.

Q TDe year was 1975?

A Yes.

Q Do you recall whether it was in the beginning of the year or at the end of the year?

A It was cold.

Q It was cold?

A Cold.

Q It could have been toward the end of the year?

A Yes, it very well could have been.

Q The property that you exchanged for in unit 21, did you continue to make payments on the property in unit 21?

A No. For some reason or another I got behind in the payments. We wanted to make another transaction. Then they told me that the properties had been taken by someone else and then after that they sent me payment stubs to make payments on it. I never made any payments because it was my understanding was that the property had been taken over by someone else.

Q Did you make any payments at all on the property that's reflected in Government Exhibit 146-P, unit 21? Did you make any payments on this property?

A Yes, there was moneys applied to this property.

Q What happened to the payments that you made on that property in unit 21?

MR. ARKIN: Objection, your Honor. I lost it.

THE COURT: I don't understand.

MR. ARKIN: I don't understand the question.

(Continued on next page.)

MS. HYNES: Let me try to clarify it, your Honor.

Q Mr. Jones, did there come a time when you forfeited some money to the company?

A Better than $500

Q Tell the Judge and the jury how that happened; what happened?

A I had some financial problems. I went to the representative and spoke to him about it.

Q Who did you go to speak to?

A Mr. Ronald Stasiewicz.

Q Where did you speak to him?

A At a dinner.

Q At a dinner?

A At a dinner, yes.

Q What did he say to you and what did you say to him?

A Well, I told him that I was having some problems. He said to me that I had to get up maybe another $300 or so in order to have the property reinstated.

He gave me a date to deal with it. I wasn't able to meet that date with the monies. I didn't get a chance to speak to him after that for a long while and when I did he had told me that the properties had already been taken by someone else.

Q Did you ever make inquiries about having the money that you paid into that Unit 21 applied to your Unit 13 property?

A Definitely.

Q Who did you make inquiries of?

A I spoke to Mr. Ronald Stasiewicz to see if I could have the monies transferred to the properties that I was now dealing with and he said it could not be done.

MS. HYNES: Your Honor, I have no further questions of this witness.

THE COURT: Cross examination.

CROSS EXAMINATION

XX

BY MR. ARISOHN:

Q Mr. Jones, my name is Mark Arisohn.

You testified on direct examination two times, I believe, that you never had any intention of moving to Rio Rancho, New Mexico, is that right?

A That's correct.

Q Do you recall receiving in the mail a questionnaire from the United States Attorney's office about a year ago?

A Yes.

Q Do you recall filling that out?

A Yes, I recall filling it out.

Q Do you recall sending that back to Ms. Hynes?

A I recall sending it back.

Q Do you recall that one of the questions you were asked to answer was whether one day you would like to move to New Mexico when you purchased the property?

A Yes, my wife convinced me that maybe we ought to, but I convinced her that we are not.

Q Did you fill out the questionnaire?

THE COURT: Show it to him.

A Let me see it.

MR. ARISOHN: May we have this marked.

xxx (Defendant Rio Rancho Estates Exhibit AQ marked for identification)

Q Mr. Jones, I show you Defendant Exhibit AQ for identification and ask you is this the questionnaire which was sent to you about a year ago which you filled out?

A It's very possible my wife could have put this in here.

THE COURT: No, the question is did you fill it out?

THE WITNESS: No, I don't recall filling it out. My wife might have filled it out. I am not certain to tell you the truth. She might have done it or I might have done it.

THE COURT: Is there a signature on it?

MR. ARISOHN: No, your Honor.

Q I direct your attention to Answer No. 10 and says, I did not cancel and ask you, is that your handwriting?

A It may be my wife's.

THE COURT: The question is, is it yours?

THE WITNESS: No, I cannot truthfully tell you that.

THE COURT: Mr. Jones, the question is a very simple answer. The question is, is that your handwriting. That does not call for an answer it may be your wife's.

The question is: Is it yours and the answer is yes or no.

THE WITNESS: No.

Q Do you recognize that as your wife's handwriting?

A Yes. It's got to be one of us.

Q So it may be yours?

A It could be.

Q It could be yours?

A It could be.

Q Do you recall getting this questionnaire in the mail, don't you?

A It's been so long, really.

Q It was about a year ago, wasn't it?

A You just said that otherwise I would have never known.

THE COURT: You give us your idea of when you got it.

THE WITNESS: Your Honor, I couldn't answer that in all fairness because I really don't remember.

THE COURT: You have no recollection at all, is that it?

THE WITNESS: Of when it was filled out, I don't. I really don't.

Q Do you recall this past August, August 16, 1976, being visited by a man named Mr. Villafana?

A The name doesn't particularly ring a bell.

Q Were you visited on August 16, 1976 by a man asking you questions about this case?

A Yes, someone came to my home and spoke to me about Rio Rancho Estates.

Q You spoke with him, didn't you?

A Yes, I spoke with him.

Q Did you tell him at that time that you had been contacted by telephone by someone from the United States Attorney's office and that a few weeks later you received a questionnaire from the office of the United States Attorney, Southern District and you filled it in and mailed it back to the United States Attorney's office?

A Yes.

Q You recall telling him that?

A Yes.

Q You just testified today that you don't recall filling this out and last August you said you did recall filling this out.

Does that refresh your recollection, sir, that you did fill this out?

A It's like I said, I might have filled that out. I still couldn't tell you any more now than I could before.

Q You also might have said, sir, when you did fill it out that at the time you purchased the property you believed you would one day move to New Mexico, right?

A That was an issue we were never too certain on except that Rio Rancho doesn't hold anything for me as far as my work is concerned. I know nobody there and have no connections at all.

Q You also testified on direct examination, Mr. Jones, that you knew you had a right to a refund, but you didn't know you had to go out and visit the property within six months to get that refund, is that correct?

A Yes.

MR. ARISOHN: Ms. Hynes, may I have the contract? 146-O, N and P.

Q On May 23, 1969, Mr. Jones, you purchased an acre and a half in Unit 8, is that correct?

A Yes.

Q Exhibit 146-N is your reservation and purchase agreement?

A Yes.

Q Your signature appears on the bottom of this contract.

A Yes.

Q And your wife's name is Elease Jones.

A Correct.

Q Is that her signature on the bottom of that document?

A That is.

Q On that night you committed yourself to purchase an acre and a half for $5,520, is that correct?

A Yes.

Q You got a discount of $325, is that correct?

A That was right.

Q When you signed this contract you noticed this big black print on the front page here which says "Refund Guarantee"?

A I saw that.

Q You read, didn't you, that the buyer shall have six months from the above date to make a registered personal inspection of the property described herein and have every penny paid to the seller refunded if he is not satisfied with his property in any way provided seller is so notified at the time of initial inspection?

A That I had no idea that you had to visit the properties. It was an oversight on my part, but that is what it was.

Q When you made your purchase in November 1969 and you were committing yourself to spend $7600 less a cash down payment, did you notice again that they had a big black print which said "Refund Guarantee" on the contract, referring now to Exhibit 146-O in evidence?

A That is on every contract that Rio Rancho has ever given me.

Q How many contracts have they give you, Mr.

ojw 9   Jones - cross

Jones?

A   At least three.

Q   You know that is on every contract, correct?

A   It's been on every one that I know of.

Q   That is because you have read them all, isn't it?

A   Not thoroughly.

Q   You read the refund guarantee?

A   I heard most of what it was about.

Q   The part you didn't hear was the part that you had to go out to Rio Rancho to exercise the refund ?

A   I had no idea that that was the stipulation that you had to go. When I was told that you could get your money back under any uncertain terms at Rio Rancho, I had it in my mind that if within six months if you didn't have a final decision after that, that you just simply had to deal with the properties.

Q   Doesn't the refund guarantee provision provide that you have to go out to Rio Rancho to exercise that provision?

A   That wasn't my understanding.

Q   Do you recall being told on May 23, 1969, that is the date of your first purchase, about a vacation travel allowance?

A Yes.

Q You recall that?

A I remember that I was given some literature involving a trip and certain allowances to be paid for it.

Q You knew, didn't you, that if you went out to visit the property to exercise your refund privilege that the company would give you a certain amount towards the purchase of your land at Rio Rancho? That was called a vacation travel allowance, wasn't it?

A Something of that sort, I imagine.

Q You knew that, didn't you?

A Well, I had no intentions of going out there so I really --

Q That is not my question, Mr. Jones. You knew that, didn't you?

A When you say "know", I cannot tell you that, that I knew this.

(Defendant Rio Rancho Exhibit AR marked for identification)

t5b

Q You testified that you knew about a vacation travel allowance, right?

A Mr. Stasiewicz had given me a flight chart showing several different months in which you could go to Rio Rancho Estates and the amount of moneys that it would take for two people to go there to inspect the properties and spend several days to see the properties.

Q You knew you had the right to go to Rio Rancho and inspect the properties, is that correct?

A Certainly.

Q And you never did, did you?

A I never went.

Q Mr. Jones, on direct examination you also testified that you were not certain that prior to signing the contract you received the property reports.

Do you recall that?

A When I said that I didn't receive any property reports, after the presentation had been given, Mr. Stasiewicz was speaking to me about whether I was interested in the properties or not. When I let him know I was interested, the first thing he shot me to was the contract.

I signed the contract and all of that and I took papers, brochures, leaflets, whatever literature they had, shook his hand and went home.

Q You took all that home, right?

A Home.

Q And you looked at it all when you got home?

A Oh, I looked at some of it.

Q Were you aware that if you had not been given the property report at least 48 hours before signing the contract, you had the absolute right to void the agreement?

A I had no idea.

Q I show you Government's Exhibit 146-N, which was the first contract you signed?

Right underneath your initials -- these are your initials, sir, are they not?

A Yes.

Q And those are your wife's initials beneath that?

A Right.

Q Right underneath your initials acknowledging receipt of the property reports, doesn't that contract cite the following, "Buyer," that's you "shall have the option to void this agreement if he has not received a property report prepared pursuant to the rules and regulations of the U.S. Department of Housing and Urban Development in advance of, or at the time of signing this agreement. Buyer shall have the right to revoke this agreement within 48 hours after signing this agreement if buyer did not receive such property report at least 48 hours before signing."

A Hey, listen, man, I was as green as your thumb, do you understand? I knew nothing about properties, period.

Q You were spending --

THE COURT: That isn't the question. The question is did you read the contract before you signed?

THE WITNESS: In a darkly lighted room, I didn't know nothing. I read it as much as anybody did, I imagine. They were so busy serving coffee and tea. I looked at the contract, I read --

THE COURT: You don't know what anybody else read; let's forget that.

THE WITNESS: I just signed it because I thought it was a good deal. That's the only reason I signed it. I thought I was getting into something that was a good deal. Other than that, as far as all of these stipulations in here is concerned, I don't even know enough aboutit.

THE COURT: That isn't the question.

TUe question is, did you read something before you signed it, this contract?

THE WITNESS: The things that I read was I could get my money back within six months if I was dissatisfied with the property.

THE COURT: You read that?

Q You read that, sir?

A But I had no idea that I had to absolutely go out and visit the properties before that decision could be made. I didn't have any idea I had to go to Rio Rancho Estates in order not to get my money back if I wanted it.

Q Did you consider spending $5,000 for property something important to you?

A Very important.

Q You didn't make that decision lightly, did you?

A Well, I believed a great deal in the people I was talking to and I had a lot of confidence in them.

Q I didn't ask you, sir. I asked you, did you make that decision lightly? Is that something you just signed because you felt like signing it or did you think about it?

A I thought about it, yes, yes.

Q Mr. Jones, did you know at the time you signed this contract that if you were in default in paying on it for a period of 60 days, that the seller, that is Rio Rancho, would have the right to terminate the contract by mailing you a notice that it would do so?

A Certainly.

Q You knew that that was their right?

A They did it.

Q I am not asking you that.

When you signed the contract,you knew that that was their right, didn't you? Yes or no.

A Well, show me what you are talking about.

Q Paragraph 11 on the back side of this agreement, Exhibit 146-N.

A Yes.

Q You knew that?

You also knew, sir, that you were committing yourself on this contract to pay $68 a month every 15th of the month, is that correct?

A Right.

Q Excuse me?

A Yes.

Q And that if you defaulted in making those payments for one 60 day period, that every single cent that you paid in the company could keep and that would be the end of your contract? You knew that, right?

A I have to know it.

Q You also knew, sir, didn't you, that in the event you had troubles and couldn't make your payments for a 60 day period, if you notified the company about that fact, they would defer your requirement to make those payments for one 60 day period during the life of the contract? Did you know that?

A Say that again, please?

Q You knew that if you had trouble making your payments during the term of the contract and that was due to some illness or some emergency or something like that and you notified the company of that, that under the terms of this contract you could delay making payments for a 60 day grace period and that you would not lose your property or your money?

A I couldn't honestly say that I had read the contract that well.

Q I will show you paragraph 4 of the back side and see if that refreshes your recollection (handing).

A I agree with that anyway simply because they did that.

Q They did do it?

A Yes.

Q And you knew that you had --

A They exchanged the properties.

Q I am not asking you that.

You knew you had the right under the terms of this contract to delay making payments for a 60 day period in the event of illness or other emergency and that you notified the company of that fact? You knew that, didn't you?

A Seriously speaking, I didn't.

Q Did you read the back side of this contract where it says, "In the event of illness or other emergency, upon written request of the buyer accompanied by satisfactory proof of illness or emergency, and with the written consent of the seller, buyer may delay payments under this contract for up to 60 days without penalty, once during the life of this agreement."

Paragraph 4 says it, is that right?

A If the contract says it, that's what it is.

Q Shortly thereafter, sometime in December, 1969, which would have been after your second purchase -- the first purchase, again, was in unit 8, is that correct?

A I think so, yes.

Q And your second purchase was in unit 13, is that correct?

A Yes.

Q Shortly after your second purchase in unit 13, which was on November 2, 1969, you testified that you ran into financial difficulties.

A Yes.

Q And you received the final notice which Ms. Hynes put in evidence before, is that correct?

A Yes.

Q Did you make a payment after you received the final notice?

A Yes, I had made payments, yes.

Q This is December, 1969?

A Oh, certainly.

Q Didn't you, in fact, in May, 1970, request Mr. Stasiewicz to make a reduction in your monthly payments?

A Yes.

Q And didn't he agree to do that?

A Yes, he did.

Q And didn't, in fact, the company give you a short period of time to reduce your monthly payments?

A Yes, they did.

Q That was to help you out, wasn't it?

A Of course.

Q Excuse me?

A Yes.

Q And in July, 1970, didn't you ask, again, that they make a special dispensation to you and reduce your monthly payments?

A Of course.

Q And, again, didn't they do that in July, 1970?

A Yes, they made other arrangements for me.

XXX

(Defendant Rio Rancho Estates Exhibit AS was marked for identification.)

(Continued on next page.)

Q Mr. JOnes, I show you AS for identification, and ask you, is this a copy of the letter you received from Rio Rancho in July 1970 wherein the company reduced the amount of money you paid in on your two outstanding contracts for a period of six months (handing)?

A I received this letter.

MR. ARISOHN: I offer AS.

MS. HYNES: No objection.

(Defendant Rio Rancho Estates Exhibit AS received in evidence)

MR. ARISOHN: May I read a portion of this to the jury, your Honor?

THE COURT: Yes.

(Mr. Arisohn read Defendant Rio Rancho Estates Exhibit AS in evidence to the jury)

Q As a result of this payment reduction, Mr. Jones, isn't it a fact that your monthly payments on the two pieces of property were reduced from about $176 a month to about $140 a month?

A Yes.

Q And isn't it a fact that after that special dispensation that you were given, you continued to have problems making the payments?

A Yes.

Q At one point, you were eleven months behind on making your payments for the property you had in Unit 8, which was the first purchase, and six months behind in the pyaments that you were supposed to make on your property in Unit 13, isn't that a fact?

A That's where a mixup came in there. That's when the properties were exchanged from one to another --

Q I am talking about the period before you exchanged the property.

A As far as I knew, if the properties got eleven months behind, they had already taken it.

I never let no payments get eleven months behind. That was impossible. And still thinking I owned the property, that was out of the question.

Q You actually thought that they had cancelled on you?

A They sent me a notice telling me that. They wouldn't transfer the monies any further and I lost it. It's as simple as that.

Q Did there come a time in November of 1970 when you thought the company had cancelled your property and you wrote a letter to Mr. Cummings at Rio Rancho?

A I recall the name of Mr. Cummings.

..xxx (Defendant Rio Rancho Estates

Exhibit AT was marked for identification)

Q I show you Exhibit AT for identification, and ask you, is that the letter you wrote to Mr. Cummings and is that your signature at the bottom of the letter?

A I got news for you, this isn't my handwriting. I don't write like that.

Q Is that your wife's handwriting?

A No, it isn't.

I know hers as well as mine, and it is so close I know the difference.

I didn't write that.

Q Mr. Jones, I show you what has been marked Government Exhibit 146-P, which is the contract which is the property exchange amendment, and ask you, is that your signature at the bottom of the page?

A That's my signature.

You can see there is a vast difference. They write a lot better than I do, unfortunately.

Q Would you mind taking this piece of paper and signing your name a couple of times to it?

A (Witness complies with this request)

MR. ARISOHN: May I have this marked.

(Defendant Rio Rancho Estates Exhibit AU marked for identification)

x

MR. ARISOHN: I offer AU.

MS. HYNES: May I see the other document for identification?

MR. ARISOHN: Yes.

(Handing)

MS. HYNES: I have no objection, your Honor.

(Defendant Rio Rancho Estates Exhibit AU marked for identification received in evidence)

xxx

Q Is it your testimony that the signature on the bottom of Document No. 146-P is your signature?

A Every contract that I have seen has my signature, to my recollection.

Q But that this letter written to Mr. Cummings does not have your signature on it, is that correct?

A That is definitely not my writing.

Q Mr. Jones, when did you first meet Ms. Hynes?

A I believe it was a day or so ago.

Q Was that the very first time?

A Very first.

Q Did you ever meet any of the other Assistant United States Attorneys?

A I don't know anyone in here.

Q Did you ever provide the government with any documents you had in your possession?

A Every piece of literature, every contract that I had I put in an envelope and mailed it here.

Q And when was that?

A Within a week or two weeks ago or something of that sort.

Q And this document was not one of the documents you mailed to Ms. Hynes, this document referring to AT?

A I never had no letter with no photostatic copies of it and I don't write like that, I'm sorry.

Q I am not asking you that.

A That is not my signature.

Q Did you send Ms. Hynes a copy of this letter?

A I sent her everything that I had.

Q Did you send Ms. Hynes a copy of this letter?

A I'm not certain. I just checked all the literature that there was and I sent it.

Q So this letter may have been among the literature you sent to her, is that correct?

A It's not my writing.

Q That is not what I asked you.

A I couldn't be certain because I didn't read every bit of literature I sent to her. I only gathered up -- as a matter of fact, I don't recall any letters sending to her at all, to tell you the truth. Any letters that was not on a form of any kind that had Rio Rancho names on it, any letters from anybody, I don't recall sending any letters of any kind.

Q Did you ever ask Mr. Cummings for a ninety day period to catch up on the past due?

A If Mr. Cummings was who I spoke to when I wanted to have the payments reduced, that's who he was.

Q Did you ever write any letter to Rio Rancho?

A No. Most of what I done with Rio Rancho I would always call or I would go to a dinner and see the people.

Q But you never wrote any letter to Rio Rancho, is that your testimony?

A No letters to my recollection at all ever. No letters.

Q Never sent any letter to Rio Rancho?

A None that I can recall.

Any time I had a problem, I either called Mr. Stasiewicz or I went to the City or I went to a dinner.

MR. ARISOHN: Your Honor, I offer AT for identification.

MS. HYNES: Your Honor, there are markings on this.

If we have a clean copy, I don't have any objection to it.

THE COURT: You mean the brackets here? Is that what you object to?

MS. HYNES: The brackets and at the top it says -- there is a name at the top, your Honor.

THE COURT: Yes.

MS. HYNES: What I am saying is, I think we can provide a clean copy.

THE COURT: Produce a clean copy, then, and substitute it overnight and I will take it as it is.

MS. HYNES: Thank you.

(Defendant Rio Rancho Estates Exhibit AT received in evidence)

Q After the summer of 1970, Mr. Jones, did you continue having financial difficulties in making your payments to Rio Rancho?

A I had problems.

Q And di you receive another final notice in June of 1971?

A It's a great possibility, yes.

Q Did you receive another final notice on October 4, 1971?

A I received quite a few. I could never doubt you on that.

Q Did you receive another final notice on December 16, 1971?

A If I did, I did, I guess.

Q On January 31, 1972?

A I received quite a few notices from them.

Q Each one of these notices, by the way, said unless you paid up within fourteen days you would be cancelled.

Do you recall that?

A Every time I received a letter of a threat to lose the property, I got on the phone immediately, called someone down at Rio Rancho Estates or I called New York City and found out where Mr. Stasiewicz was holding a dinner and I went to see him personally.

Q And every time you got one of these final notices, you also --

A When I did, I had to pay more monies in order to get it reinstated, and that's the way it's been going.

Q Every time you got one of these final notices, you knew that the contract entitled Rio Rancho to cancel your agreement and forfeit all your money, didn't you?

A Yes.

Q You testified to that before. You knew that?

A Yes.

Q And there came a time in February 1972, where your property was actually cancelled.

Do you recall that?

A That must have been the properties, I guess, for the $25.

Q That was cancelled?

A I lost 500 and some odd dollars.

Q Do you recall --

A That must have been the cancellation.

Q Do you recall after you received the cancellation notice that you made an inquiry at Rio Rancho to find out how you could get reinstated?

A I spoke to Mr. Ronald Stasiewicz and asked him if the monies could be applied to the lot that I was holding that I wanted to hold the most, and that was in Unit 13.

He said it could not be done.

Q And it is your testimony that it was not done?

A And I lost the monies.

Q And it is your testimony you lost the monies?

A I lost the monies.

Q And that account was never reinstated, correct?

A Never.

xxx

(Defendant Rio Rancho Estates Exhibit AV marked for identification)

Q Is your address 140-41 Queens Boulevard, Jamaica, New York?

A Right.

Q Do you recall receiving this letter on approximately May 9, 1972, this letter being marked AV for identification?

A Yes.

Q You did get that letter?

A Yes.

Q You did get that letter?

MR. ARISOHN: I offer AV.

A Can I ask you a question?

MS. HYNES: No objection.

(Defendant Rio Rancho Estates Exhibit AV marked for identification received in evidence)

xxxx

MR. ARISOHN: May I read the letter, your Honor, before we recess?

THE COURT: All right.

(Mr. Arisohn read from Defendant Rio Rancho Estates Exhibit AV in evidence to the jury)

THE COURT: Before you finish with that, what account is that?

MR. ARISOHN: It is 37909010, your Honor, and I believe that is the Unit 13 purchase.

THE WITNESS: 13.

THE COURT: All right.

We will adjourn now until tomorrow morning, but we will not reassemble until 11:30 tomorrow morning.

I want to caution you, as I cautioned you at the opening of the trial, not to discuss this case with anyone, not even among yourselves, and I would also like to repeat the caution I made concerning the possible appearance of newspaper articles concerning this case in the newspapers, you are to avoid reading such articles.

Of course, if by chance there are any radio or television broadcasts regarding it, I again ask you please not to listen to them, and not to read anything which may concern this case or have anything to do with the type of case that we are dealing with here.

See you tomorrow at 11:30.

(The Judge and jury left the courtroom)

(In open court in the absence of the Judge and Jury)

(In open court with Ms. Thompson and

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Mr. Devorkin present)

MR. DEVORKIN: The government just gave the defendants 3517-A, an FTC interview report with Nick and Charlotte Masone.

3522-A, a questionnaire for C. Mohammed-Ladson.

3522-B, a letter, dated October 30, 1975, from Miss K. Mohammed-Ladson to Channel 7 TV News.

3522-C, a letter, dated January 17, 1973 from Mrs. K. Ladson to The Department of Commerce, Albuquerque.

3522-D, letter, dated December 29, 1975 from K. Mohammed-Ladson to Rio Rancho.

3522-E, letter, it appears undated, from K. Mohammed to the Federal Trade Commission. I believe it is a 1975 letter. I represent that.

3522-F, a questionnaire from K. Mohammed, dated January 13, 1976, to the Federal Trade Commission.

MR. KAUFMAN: Though there is no 3500 material, the government also revealed that the witness by the name of Jean Morris would be a witness who was forthcoming.

(Adjournment taken to Thursday, November 16, 1976 at 11:30 a.m.)

end

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
William J. Finnen (Resumed)		1535		
Ann Greenberg	1558	1628	1664	
David Jones	1667	1696		

EXHIBIT INDEX

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AJ	1539	1540
AK	1541	
AL	1541	
AN	1644	1649
AO	1644	
AP	1658	

Government	Identification	In Evidence
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1301		1567
1303		1572
1304		1575

Government	Identification	In Evidence
1305		1580
1306		1584
1306-A		1588
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Defendant Rio Rancho Estates		
AQ	1697	
AS	1713	1714
AT	1716	
AU	1716	1717
AV	1723	1723

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UNITED STATES OF AMERICA

V. 76 Cr. 644

AMREP CORPORATION, et al.

November 18, 1976
11:30 a.m.

oOo

(Trial resumed.)

(In open court; jury present.)

XX

DAVID JONES, resumed.

THE COURT: You may proceed.

XXX

CROSS EXAMINATION (Continued)

BY MR. ARISOHN:

Q Mr. Jones, when we left off yesterday afternoon, you testified that in May of 1972 your unit 13 property had been reinstated, is that correct?

A Yes.

XX

(Defendant Rio Rancho Estates Exhibit AW was marked for identification.)

Q Mr. Jones, I show you AW, and ask you if you received this letter from Rio Rancho Estates (handing).

A Yes.

Q Yes?

A Yes.

MR. ARISOHN: I offer AW.

MS. HYNES: I have no objection.

XXX (Defendant Rio Rancho Estates Exhibit AW marked for identification received in evidence.)

THE COURT: Isn't this referring to the same property?

MR. ARISOHN: It is referring to the same property, yes, your Honor.

THE COURT: As AV?

MR. ARISOHN: Yes, your Honor. It is a second letter, though.

May I read it, your Honor?

THE COURT: Yes.

(Mr. Arisohn read Defendant Rio Rancho Estates Exhibit AW in evidence to the jury.)

Q After this reinstatement, Mr. Jones, you received another final notice on that very property, that is unit 13, in September of 1972, didn't you?

A It's possible, yes.

Q And that is because you were delinquent in the amount of $276?

A Yes.

Q At that time you still had your unit 8 property, is that correct?

A In what year was that?

Q That was 1972.

You had not yet exchanged your unit 8 property?

THE COURT: Wait a second. Wait. Hold it.

Exhibit AV referred to unit 8, did it not?

MR. ARISOHN: No, your Honor.

AV referred to unit 13, your Honor.

THE COURT: Yesterday you told it unit 8 when I asked you.

All right.

Q Did you receive a final notice on that property December 6, 1972?

A The properties in unit 13 or the one in unit 8?

Q No, the one in unit 8.

A In unit 8 you are saying?

Q Yes, sir.

A Yes.

Q On February 2, 1973, did you receive another final notice on your unit 13 properties?

A It's a possibility.

Q During all this time, none of these properties were foreclosed, is that correct?

A Unit 8 was foreclosed.

Q And then they reinstated that?

A Unit 8 was not reinstated.

THE COURT: When did that happen?

THE WITNESS: They foreclosed on it.

THE COURT: What is the date? September of 1972 was a final notice regarding it, right?

MR. ARISOHN: I think I can clear it up, your Honor, in a second.

May I have this marked.

XXX (Defendant Rio Rancho Estates Exhibit AX marked for identification.)

Q Mr. Jones, isn't it a fact the land you exchanged for the land you eventually bought in unit 21 was your unit 8 property?

A That's what it was originally, yes.

Q I show you AX for identification, and ask you, is this the property exchange amendment which you signed in March of 1973 whereby you exchanged your unit 8 property for property in unit 21 (handing).

A Yes, that's the document.

MR. ARISOHN: I offer AX.

THE COURT: Isn't that the same as Exhibit 146-P?

MR. ARISOHN: It is the same, your Honor, except that on AX there is the rider to the property exchange amendment which I don't believe is 146-P.

We would be happy to substitute the rider which is on the copy of this onto Government's Exhibit 146-P.

MS. HYNES: I have no objection.

XX (Defendant Rio Rancho Estates Exhibit AX received in evidence.)

Q Mr. Jones, isn't it a fact that when you exchanged your unit 8 property for unit 21 properties, all the moneys you had paid in on unit 8 were credited in your account in the amount of $319.13 toward the purchase of the unit 21 property?

I show you the rider to this contract, Exhibit AX, referring you specifically to payment terms previous payments, $319.13 (handing).

A Yes.

Q That's a fact, isn't it?

A There was a problem with that.

Q The moneys you --

A In the transfer --

Q Excuse me, Mr. Jones.

The moneys you paid in on unit 8, when you transferred that to unit 21, you got a credit for $319.13, isn't that true?

A Yes.

(Continued on next page.)

Q And as a result of that transfer, the property you purchased in Unit 21 was less expensive property than the property you had in Unit 8, wasn't it?

A Yes.

Q And the reason for your transfer was so that you would have to pay less per month, isn't that a fact?

A The reason for that transfer was not to lose the original monies at all.

Q But as a result of that transfer, you paid less money per month?

A True.

Q And the reduction in payments was from $68 per month to $25 per month, isn't that a fact?

A For lesser properties, certainly.

Q At that time you still owned your Unit 13 property, didn't you?

A Yes.

Q And on April 16, 1973, you were sent an additional final notice on your Unit 13 property, isn't that a fact?

A True.

Q And, again, on August 6, 1973, you were sent another final notice on your Unit 13 property, isn't that a fact?

A True.

Q And, again, on November 1, 1973, you were sent another final notice on your Unit 13 property, correct?

A True.

Q Between November 1, 1973 and November 30, 1973, you requested, with respect to your Unit 13 property, that Rio Rancho reduce your monthly payments on that property, isn't that a fact?

A True.

Q And they did it, didn't they?

A Yes.

Q And with respect to the property in Unit 21 that you exchanged your Unit 8 property for, you received a notice on December 5, 1973 that because of arrears in your payments on the Unit 21 property, the company had cancelled your agreement on Unit 21? That is what you testified to yesterday, is that correct?

A The reason for that was because --

Q Is that correct, Mr. Jones?

A That's correct, yes.

Q And that was on December 5, 1973.

Isn't it also true that after they cancelled the property on December 5, 1973, one day and a week later, that is, on December 13, 1973, you were permitted to transfer the cancelled property in Unit 21 for another piece of property in Unit 21?

(Defendant Rio Rancho Exhibit AY marked for identification)

Q I show you AY, and ask you if that refreshes your recollection that on December 13, 1973, you were permitted to transfer your Unit 21 property for another Unit 21 property (handing).

A Yes.

Q Yes, Mr. Jones?

MR. ARISOHN: I offer AY.

Q This is your signature on AY, isn't it?

Yes, that's my signature.

MS. HYNES: I have no objection .

(Defendant Rio Rancho Estates Exhibit AY received in evidence)

Q Calling your attention to the bottom right-hand corner of AY in evidence, Mr. Jones, are these your initials and your wife's initials?

A They are.

Q And are those initials placed in the space where it says, "I do expect to use the above property as my principal residence"?

A It says that, but I never signed any contract with that idea.

Q But those are where your initials are.

A I was told to initial it in certain places and I did just that.

Q And you read this before you initialed it, didn't you?

A No, because I had seen them before.

Q You read this before and that is why --

A I didn't read this before. When I got the first original contract and signed it, wherever I was told to put in my initials I put them in.

Q And you put your initials in here where it says, "I do expect to use the above property as my principal residence".

Is that because your wife did or because you did?

A No, that was because the representative told me where to put my initials.

Q And you didn't read where you put the initials-

A I signed the contract, so what difference does it make where I put my initials.

Q Is that because you were careless here, too, like you were on the first contract?

A This particular contract within itself was a transfer of properties that came from Unit 21 that I never wanted to buy anyway. I couldn't transfer the monies to the properties that I definitely wanted to transfe them, which was in Unit 13.

Q Excuse me.

Your testimony was that after your Unit 8 properties were cancelled, you were permitted to transfer the Unit 8 properties to Unit 21 and all the money you paid in on Unit 8 was applied towards your purchase of Unit 21, is that correct?

A I didn't want either one of those. I couldn't transfer the properties the way I wanted it.

THE COURT: Wait. That is not the question he asked you. That is not being asked of you.

Did you put your initials in those places --

THE WITNESS: They transferred the properties.

THE COURT: Wait.

-- without reading what you were signing?

THE WITNESS: Yes, I made that mistake.

THE COURT: That is the question.

end t

Q At the time you signed the exchange amendments within Unit 21 was after they had cancelled your Unit 21 properties on December 5th, your property was exchanged for another piece of property in Unit 21 on December 13th and you gave them a check, a cash down payment, didn't you?

A Of course, yes.

Q Do you recall that that check was stopped because of insufficient funds?

A Yes.

THE COURT: Wait, yes or no?

THE WITNESS: Yes.

xx (Defendant Rio Rancho Estates Exhibit AZ marked for identification)

Q I show you AZ and ask you if this is your check that was stopped for insufficient funds dated December 13, 1973.

A This is a check made out by Rio Rancho. That is not my personal check. This is a check that I signed for the company and in the event that I deposited the monies in time to cover that check, then the check would have cleared, but that is not my personal check.

Q This is your signature on it?

A That is my check -- I signed this check for the company.

Q I take it the night you signed this check you didn't have your checkbook with you.

A No, I didn't.

MR. ARISOHN: I offer AZ.

MS. HYNES: We have no objection .

(Defendant Rio Rancho Estates Exhibit AZ received in evidence)

Q By the way, Mr. Jones, you testified yesterday that it may have been your wife who wanted to move to Rio Rancho and not you, right?

A We might have entertained the idea at one time, but there was never anything definite on it. The only definite thing I can tell you is that we weren't going.

Q Your wife was more definite than you were in wanting to move to Rio Rancho, wasn't that your testimony yesterday?

A When I am definite, everybody is definite.

Q Your wife was a little more definite than you were?

THE COURT: That is not true in this courtroom, Mr. Jones. You just answer questions.

A We were not going to Rio Rancho.

Q That is not my question, Mr. Jones.

Wasn't your wife interested in going to Rio Rancho?

A No.

Q You didn't testify to that yesterday on direct examination?

A I said we spoke about it. There might have been a time when we were in the midst of an indecision but we had no intentions of locating at Rio Rancho.

Q By the way, did you and your wife speak to Ms. Hynes together?

A No

Q Just you?

A Just me alone.

Q After your check bounced because of insufficient funds on December 13, 1973, sometime in September 1974, on September 10, 1974, you still had your Unit 13 property, didn't you?

A Yes.

Q On September 10, 1974 you received another final notice on your Unit 13 property, is that correct?

A Of course.

Q One month later on October 17, 1974 you made a request to Rio Rancho -- strike that.

Isn't it a fact that on October 17, 1974 you were four months in arrears and Rio Rancho asked you if you would like to make some arrangement with them to help you out, isn't that a fact to bring your account current?

A Yes.

(Defendant Rio Rancho Estates Exhibit BA marked for identification)

Q Is this the letter, that is BA for identification, which you received on or about October 17, 1974 from Rio Rancho?

A I think the last person that I spoke to in regard to the account was a Mrs. Katy Dudley.

Q Mr. Jones, on October 17, 1974 --

A I am sorry, yes.

Q You received that letter, didn't you?

A Yes, that's right.

MR. ARISOHN: I would offer BA now.

MS. HYNES: Can we have an identification of which account this is, which Unit?

MR. ARISOHN: 3790902. That was his Unit 13 property reinstated.

MS. HYNES: I have no objection, your Honor.

(Defendant Rio Rancho Estates Exhibit BA received in evidence)

(Mr. Arisohn read from Defendant Rio Rancho Estates Exhibit BA in evidence to the jury)

Q Mr. Jones, on January 10, 1975 your Unit 13 property, after arrears between October 17, 1974 and January 10, 1975, that property in Unit 13 was cancelled, wasn't that the fact?

A The property in Unit 13 has never been cancelled.

(Defendant Rio Rancho Estates Exhibit
xxx BB marked for identification)

Q Did you receive this letter from Rio Rancho in or about January 1975?

A This isn't true.

Q Did you receive this letter in or about January --

A I didn't receive that letter.

Q You didn't?

A Not that one.

Q Your address is 140-21 Queens Boulevard?

A Yes, Mrs. Katy Dudley is the woman I spoke to personally on the phone who reinstated that.

THE COURT: Wait, he only asked the question whether you received the letter.

THE WITNESS: I didn't receive this letter.

Q I take it, Mr. Jones, that on April 22, 1975 you didn't receive a letter reinstating the account which had been cancelled either, correct?

THE COURT: Mark it.

A I never received a letter of cancellation.

(Defendant Rio Rancho Estates Exhibit BC marked for identification)

Q I show you BC and ask you if that refreshes your recollection that your Unit 13 property had been cancelled and then reinstated a month later?

A There was no money transaction in that and no definite notice of cancellation. This was done strictly by the phone.

THE COURT: Did you receive that letter?

THE WITNESS: I received this letter in regards that the account was still in effect.

MR. ARISOHN: I offer BC.

MS. HYNES: We have no objection.

(Defendant Rio Rancho Estates Exhibit BC received in evidence)

MR. ARISOHN: May I read it, your Honor?

THE COURT: Yes.

(Mr. Arisohn read from Defendant Rio Rancho

Estates Exhibit BC in evidence to the jury)

Q Mr. Jones, do you recall yesterday you told me you remembered being interviewed by an investigator on this case, correct?

A I remember that a gentleman came to my home.

Q You spoke to him about Rio Rancho.

Do you recall telling him that each and every time you sought help from AMREP in meeting the payments they have been very cooperative and helped you out?

A Certainly they were without a doubt.

Q Do you recall telling him, Mr. Jones, that in describing your dealings with AMREP personnel you described that as beautiful and fantastic and told him that you had no complaints?

A I had no complaints with Mr. Stasiewicz. I thought he was a nice person.

MR. ARISOHN: I have no further questions.

THE COURT: Redirect.

REDIRECT EXAMINATION

XXX

BY MS. HYNES:

Q Mr. Jones, do you recall when Mr. Arisohn on cross examination asked you about placing your initials on Defendants Exhibit AY in evidence next to the statement "Each buyer must initial where applicable I do" and there is a blank "I do not" expect to use the above properties as my principal residence.

Do you recall testifying that you were told to place your initials in a certain spot and that is where you placed them?

A That's correct.

Q Referring you to Defendants Exhibit AY next to where your initials appear, is there an X next to that?

A Yes.

Q Do you recall whether you placed that X on the contract?

A I am not going to make an X and then put my initials down. That doesn't make any sense.

Q Do you recall who did place that X?

A The representative.

Q Who was the representative?

A Mr. Ronald Stasiewicz.

MS. HYNES: Your Honor, may I hand this exhibit to the jury?

THE COURT: Yes.

Q Mr. Jones, when you transferred your property in Unit 21 to another piece of property in Unit 21, do you recall what the circumstances were for that transfer?

A Yes, I do.

Q What were those circumstances?

A The circumstances was that financially I had been having problems. I had purchased two pieces of property, one I thought more valuable than the other. I wanted to transfer the monies from what I considered the lesser property to the one of more value and I couldn't do it. The only thing that I could do was take another piece of property and pay some more money on it, but I couldn't transfer.

Q The piece of property that you were transferring, you transferred from one piece of property in unit 21 to a second piece of property in unit 21 and that second piece of property in unit 21 was that more expensive than the first piece of property?

A It was less expensive.

MS. HYNES: May I just borrow this back a moment, please.

Q Let me show you again Defendant's Exhibit AY and ask you to look at that and ask if it refreshes your recollection that the piece of property that you were exchanging in unit 21 for another piece of property in unit 21 was a more expensive piece of property?

A Yes, it is in these things, yes.

Q Do you recall on cross examination by Mr. Arisohn that he showed you this check, Defendant's Exhibit AZ in evidence. You said that this was not your personal check.

A That's true.

Q Can you describe how you were given that check?

A This check was given to me in the transfer of the properties from one location to another. Since I didn't have my own personal check with me the company accommodated me with their own check and gave me sometime to deposit the moneys so that they could be transferred to cover this check.

Q The company had blank checks at these dinners to give to people to fill out?

A Loads of them.

Q Do you recall testifying on cross examination that from time to time you would make telephone calls to Rio Rancho Estates?

A Yes.

Q And were those telephone calls to Albuquerque, to the office in Albuquerque?

A To Albuquerque, yes.

Q What was the purpose of making those telephone calls to Albuquerque?

MR. ARISOHN: Objection, your Honor. What particular calls at what particular time?

THE COURT: Sustained.

MR. ARISOHN: Thank you.

Q Mr. Jones, I will show you Defendant's Exhibit AW in evidence, which is a letter, dated May 22, 1972, and ask you to take a look at that.

(Pause.)

A Yes, I believe I received that letter.

Q Do you recall prior to receiving that letter whether you made a telephone call to Rio Rancho Estates in New Mexico?

A Whenever I received any literature that threatened the properties, I immediately called either Mr. Stasiewicz or I called the main office in Albuquerque.

MS. HYNES: May I have this marked for identification Government Exhibit 146-AA.

XXX (Government's Exhibit 146-AA marked for identification.)

Q Do you recall whether on or about May 3rd of 1972 you had a conversation with a Mr. Westfall, Trig Westfall in the Albuquerque office of Rio Rancho Estates?

A I can't be certain because the representatives changed so frequently.

Q Let me show you Government Exhibit 146-AA for identification and ask you to take a look at that and see if that refreshes your recollection as to whether you had a telephone call with Mr. Westfall.

A It's possible. It's very possible.

MS. HYNES: The government will offer 146-AA in evidence.

MR. ARISOHN: No objection.

XXX (Government's Exhibit 146-AA received in evidence.)

MS. HYNES: Your Honor, may I read from a portion of 146-AA?

THE COURT: Yes.

(Ms. Hynes read from Government's Exhibit 146-AA in evidence to the jury.)

MS. HYNES: I have no further questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

MR. DEVORKIN: The government calls Morton Lederman.

XXX MORTON LEDERMAN, called as a witness by the government, being first duly sworn, testified as follows:

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

XXX DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Mr. Lederman, please keep your voice up so that everybody in the courtroom can hear you.

How old are you, sir?

A 50.

Q What is your current employment?

A I am presently working for ITT Community Development Corporation.

Q What kind of work do you do there?

A Selling land and homes.

Q How long have you been doing that for that company

A I have been with this company about a month and a half.

Q Before you came with that company what were you doing just prior to that?

A Just prior to that I was with a real estate brokerage office.

Q Where at?

A In New Jersey.

Q What kind of work were you doing there?

A I was running the office and we were renting apartments and selling homes.

Q Was there a time when you worked for ATC Realty Company?

A Yes, there was.

Q What was the time period or time periods?

A From 1968 through 1971 and then from 1974 through 1975.

Q Was there another time period in there when you worked for another broker of AMREP Corporation?

A Yes, there was.

Q When was that?

A That was 1974, early '74 until August of '74.

Q What about in 1972?

A In 1972 I was in New Jersey with SGR Realty.

Q What was SGR Realty?

A A subsidiary of AMREP Corporation.

Q What is your educational background?

A I graduated from Townsend Harris High School in 1942 and I started City College then and left in 1943.

Q Did you go into service?

A I went into the service shortly thereafter.

Q After you got out of the service and up until the time you worked for AMREP or ATC the first time, without detailing every job you had, just give us an idea of some of the jobs you held during that period of time.

A I was in the fur business and then in 1952 I started selling homes in the New York area. I was in real estate; from that period on I was in the real estate business.

Q Did you take a real estate salesman's test or broker's test at any time?

A Yes, both.

Q Do you recall anything in that test about interstate land sales?

A I don't recall anything, no.

Q When in 1968 did you start to work for ATC Realty?

A It was June of 1968.

Q Would you please briefly describe the circumstances of how it came about that you went to work for ATC?

A I saw an ad in the New York Times and I called and made an appointment and saw Peter Miller and Leonard Geller.

Q Where did you see them?

A At their office at 16 West 61st Street.

Q Did you have a conversation with Mr. Geller and Mr. Miller at that time?

A Yes, I did.

Q What did they say to you and what did you say to them?

A Well, they told me that the job entailed selling property in New Mexico, Rio Rancho Estates, and it was done at a dinner party program and they asked me to see one or two dinner parties so that I could understand how it worked.

Q Did they explain to you what job position they were interviewing you for?

A I had responded to an ad for sales manager and that was the position that I eventually took.

Q Did they tell you the name of the company you would actually work for at that time?

A I would be working for ATC Realty Corporation.

Q Did they explain what ATC was?

A It was a subsidiary of the AMREP Corporation.

Q Did you go to any dinners?

A Yes, I went to several.

Q Alone or with anyone else?

A I went with Peter Miller.

Q What would you do at these dinners when you went with Mr. Miller initially?

A Sit at a table in the back of the room and observe the program as to how it was being run. I would ask him questions as to why this was done or that so I could get an understanding of how the program operated.

Q After you went to those dinners what, if anything, did you do next?

A I accepted the position.

Q Did you have a conversation again with Mr. Geller and Mr. Miller?

A Yes.

Q What did they say to you at that time and what did you say to them?

A I don't recall the exact words that were said, but it was a matter of working out the details as to what I would be paid and how I would be paid and what my responsibilities would be.

Q Please keep your voice up, sir.

Did they outline your duties for you as sales manager?

A Yes, they did.

Q What did they tell you your duties would be?

A My duties would be to be the speaker at the dinner program, to bring the sales people to the dinner and bring them back to the office, to help train the sales people who were assigned to me, to help the sales people close a sale whenever it was necessary.

(Continued on next page.)

Q What was the nature of your compensation, if any?

A I was given a $200 a week draw against an override.

Q What kind of override?

A Well, the basic override was 2 per cent of the sales for the group of sales people for whom I was responsible, and there was a bonus arrangement based upon volume of sales.

Q And how did that bonus system operate?

A Well, at that time it was on an annual basis starting with the time that I started working.

The 2 per cent was based on the first $300,000 of volume.

From 300 to 600,000 it was another half a per cent, 2.5.

From 600 to 900,000 it was 3 per cent.

Then above that, I believe, it was 4 per cent.

Q Did you ever earn 4 per cent when you worked for ATC?

A Yes, I did.

Q Did you sign a contract when you first went to ATC?

A Yes.

Q Did you start to work right away?

A Well, the first two weeks I was studying the script and practicing it and going to dinners with Leonard Geller's team and doing the introduction.

Q This script that you mentioned, where did you get it from?

A Peter Miller or Leonard Geller.

Q Were you given any instructions with respect to the script?

A I was told to study it, try to memorize as much of it as I could.

Q Were you told anything about the scripts besides that?

A Pardon me?

Q Were you told anything about the script that you received about that?

A That this was the presentation that had to be made. I could change a few words that would be more comfortable to present, but this was the presentation.

Q How did you go about memorizing it? What did you do?

A I saw in a room with a tape recorder all day for two weeks. I took the script home and I studied it and I read it into a tape recorder. I memorized the first part. The rest of it I made up cue cards which I carried with me to the dinners.

Q How long did it actually take you memorize the entire speech?

A Probably around a year or thereabouts.

Q How long before you actually started to work as sales manager or giving the presentation?

A It was about -- well, it was two weeks after I started working there.

Q How was it determined that you were ready to start as sales manager?

MR. FLEMING: I object to that.

THE COURT: Sustained.

Q Did you have any conversations with anybody at that time about starting as sales manager?

A This is the time that was originally scheduled when I took the job.

Q Was there an opening of some kind in that position?

A Yes.

Q During that two week period, did you get any training of any kind for your job?

A Only from the literature that was available and talking to some of the other sames managers.

Q What, if anything, were you told about the literature?

MR. FLEMING: Can we find out by whom, if your Honor please.

Q Did you have any conversations with anyone about the literature?

A I was told by --

Q By whom?

A By Peter Miller and Leonard Geller that this was the literature used at the dinners, that all the information I needed was in this literature and if I had any questions to check with one of the other sales managers.

Q I believe you said you worked as a sales manager for ATC from 1968 to 1971.

A Till 1971, yes.

Q Did you give the presentation at sales dinners during that period of time?

A Yes, I did.

Q Approximately how many dinners did you attend during those three or three and a half years?

A Approximately 700.

Q On the basis of the dinners you attended and the presentations you gave at those dinners, what was the main inducement that you used to sell Rio Rancho land?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Well, what were the principal reasons that you gave to prospective purchasers for the purchase of Rio Rancho lots?

A Well, based upon the films that we showed and the presentation I gave, it was primarily the fact that the area was growing and the only path of growth was toward Rio Rancho and that the value of this property would be going up as the area developed.

Q Beside the AMREP literature, were you given any other training or education about the population growth or land use projections in Albuquerque?

A No.

Q Did your initial training include any visits to Rio Rancho or Albuquerque?

A No.

Q How many salesmen worked under you initially?

A It varied. It generally was between five and eight.

Q Just briefly, what would you do as sales manager beside the presentation?

THE COURT: He has told that. He took the people to the dinner, he took them home, he trained them.

Q During the time that you were sales manager, Mr. Lederman, were there other sales teams working for ATC?

A Yes, there were.

Q Approximately how many?

A At times there were three or four other teams other than mine.

Q Are you familiar with what their dinner schedules were?

A Yes, I was.

Q What were their schedules like?

A Similar to mine.

Q What areas did you actually run dinners in, what geographic areas?

A The five boroughs of New York, Westchester County, Rockland County. We also went occasionally upstate New York, as far as Kingston, Poughkeepsie.

Q Do you know how people were invited to your dinners?

A By mail.

Q Where did the mailings come from?

A They came from AMREP.

Q Did you ever have any meetings with people or persons at AMREP who handled the mailings?

A Once or twice.

Q Do you recall when those meetings were?

A No.

Q Sometime when you were with ATC?

A Yes.

Q Do you remember the name of the person who handled the mailings?

A Barbara Mackin.

Q Who also attended these meetings, if anyone?

A It was the other sales manager, Peter Miller, Leonard Geller.

Q What was the purpose of themeetings?

A To discuss the turnouts that we were getting that weren't too satisfactory at some of the dinners.

Q And what was done at the meetings about that?

A It was just a general discussion,the possibility of changing a couple of restaurants and some of the areas in which the invitations were mailed.

Q Did ATC or your sales team get any kind of returned receipt from the mailings or return documents from the mailings?

A Not directly. We would receive the copies of the acceptance cards that people would send back.

Q I take it you would get the ones for your own dinners?

A Yes.

Q Did you also get a schedule for your dinners?

A Yes, we did.

Q Where did you get the schedule from?

A It was a mimeographed or Xeroxed copy we would receive at the office. We would find it in our mail box.

Q What, if anything, would you or your sales team do with the returns that came in from the mailings?

A I assigned one sales person for each day of the week and it was his or her responsibility to make confirmation calls the day prior to the dinner to get an idea of approximately how many people were coming out.

Q What, if anything, would you do for the people who decided not to come?

A They were asked if they were interested in attending another dinner, and if so it was marked on the card.

Q And then what happened to the cards?

A We turned the cards into the office the following day.

Q Did you have any meetings with anyone before the dinners began for a particular week?

A Yes. We had a managers meeting every Monday.

Q Who attended that meeting?

A The various team managers, plus Peter Miller, Leonard Geller and the person in charge of making the restaurant reservation.

Q What was the purpose of those meetings and what would you do at those meetings?

A The various things we did there, one was to review our schedule for the week so that the restaurants could be made aware of approximately how many tables or how many people were coming to those dinners.

If one of the teams had very few invitations and another one had a great many of them, sales people from one team would be lent to the other one for that particular occasion.

We would discuss business in general. Anything new that we should be made aware of was told to us.

Q By whom?

A By Peter Miller, Leonard Geller. And just -- I don't recall, you know, specifically what was said, other than it was a general meeting every week.

Q Did you review sales figures or the success of teams?

A Yes, at times we did that.

Q How would that be reviewed and what would be said about that, if you recall?

MR. FLEMING: I object, your Honor. I don't see the relevancy of thi whole line of questioning.

THE COURT: Overruled.

A Well, if someone wasn't doing enough business for that week or for that month, Peter Miller, Leonard Geller would want to know why and why enough property owners weren't invited if not enough of them had been invited in the pas weeks by the sales people, what the problems were as to why business wasn't being done that particular week or by that particular group, and there were times that sales people were -- due to that, the sales people were changed from one team to another one.

Q For what purpose?

A Well, sometimes some sales people weren't compatible with certain managers or the managers couldn't get them to work properly and they would be changed that way, reassigned.

Q What was the purpose of inviting property owners to these weekday night dinners?

A There were three reasons:

One was to -- the possibility of selling them additional property.

Another one was that they would bring friends to the dinner who would be interested in buying property.

And the third was that they would be sitting at the table with people who were invited for the first time and it was very often helpful in selling those people property.

Q When you got to the restaurant at any particular night, I take it you would set up the room that you were using, correct?

A Yes.

Q Would that include setting out literature?

A Each sales person was responsible for putting literature on his or her own table, yes.

Q Were they given any instructions about which literature to use at the table?

A No. They had quite a bit of flexibility as to which literature to use, other than they each had to have a property report.

Q Do you recall which pieces of -- was there a practice about which pieces of AMREP literature to use at the tables?

A There were certain ones they had to use and others were discretionary.

Q Do you recall which ones they had to use?

A They used "This is My Land," they used a glossy black and white and red map of the Rio Rancho and Albuquerque area, they used the property report and also a fact sheet.

Q A fact sheet about Rio Rancho?

A About Rio Rancho, yes.

Q What kind of information would be on the fact sheet?

A Well, that was changed from time to time.

It would tell what was happening there and some of the plans for the future.

Q Mr. Lederman, showing you Government's Elhibit 271 in evidence, will you take a look at it and tell us if you recognize is (handing).

A Yes. This was the map that was used.

Q And showing you Government's Exhibit 388 in evidence, would you look at that and glance through it, please, and tell us if you recognize it (handing).

A Yes. This was -- this is "This is My Land." This is one that we used.

Q How were the literature items and the property reports actually placed on the tables? In other words, where were they put on the tables? In what order, if any?

A Well, we had no specific order of most of the literature; depending on how much room was in the restaurants. The size of the tables varied from place to place. But generally, the more colorful piece of literature was put on top.

Q Where were the property reports placed in relation to AMREP's literature?

MR. ARKIN: Objection, your Honor. It would vary from time to time.

THE COURT: Sustained.

Q Was there any practice about where the property reports were placed in relation to AMREP literature?

A Generally it was put underneath the literature.

Q What was the reason for that, if any?

MR. FLEMING: I object to that.

THE COURT: Overruled.

First of all, was there a direction that the property reports be put under the literature?

THE WITNESS: Yes, your Honor.

THE COURT: There was.

Q Who told you to do that?

A This was mentioned at general sales meetings by Peter Miller or Leonard Geller.

Q Were there any other directions given about where to place property reports?

A Well, if there wasn't room on the table, it was put on an empty chair near the sales person. But usually they were told to keep it underneath and put the colorful literature on top.

Q What was the reason for that?

A First, it looked better.

Secondly, the sales people were supposed to do more talking at the tables than having people read literature.

We had a very limited amount of time in which to work. There just wasn't the time to read all the -- very much, if any, of the literature.

Q When people first arrived at the restaurant, what, if anything, was done? I mean when potential customers would arrive.

A We set up a reception table and one of the sales people would be sitting at the table to register them.

TNe people would turn in their invitation, they would be registered, and I would have another one of the sales people escort them to the table to which they were assigned.

All this time we had a carousel with slides going on.

Q Those were slides of what?

A Of Rio Rancho and the Albuquerque area.

Q What were the sales people trained to do next, if anything?

A They were to have the people fill out a confidential survey form.

Originally it was a mimeographed sheet and then it became a printed booklet.

Q Were the sales people supposed to do anything else besides have the customer fill out the confidential survey?

A Talk to them, become friendly with them, find out what it was they were interested in.

(Continued on next page.)

am

Q Showing you Government Exhibit 256 in evidence, do you recognize it (handing)?

A Yes, I do.

Q What is it?

A It's a confidential survey. It is not the original one that we were using, but it was changed to this.

Q In approximately how long a period of time while you were with ATC was Government Exhibit 256 used?

A This or a similar one, all the time that I was with them.

Q What was the purpose of having them fill out the confidential survey?

A To obtain information about the people, what their interests were, whether they had any investments and also get them used to writing.

Q Which questions were addressed to the investment issue?

A Five, seven, eight, nine.

Q What was the purpose of Question 9?

A The purpose of Question 9 was to try to get an idea how much money on a monthly basis these people could afford.

Q After all the customers had arrived for the evening, what, if anything, would you do next?

A I would go to the podium and welcome them, introduce myself and the company and a film.

Q When you first began to work for ATC, how many films were there used at a sales dinners?

A There were three filsm originally.

Q Do you recall the names of the three films?

A I only recall the names of two of them.

Q What are those?

A West Side Story and "Your Golden Future."

Q Was the third film a film with Howard K. Smith in it?

A I believe so, yes.

Q And how long was that film used, the third film, do you recall?

A During the time that I was employed there?

Q Yes.

A I don't recall the exact period of time. It was not too long a period of time.

Q And then West Side Story and Your Golden Future were the ones that were used?

A Yes.

Q Was Your Golden Future used throughout your years with ATC?

A Until 1971, yes.

Q Was it used when you were with SGR Realty in New Jersey?

A Yes, it was.

Q Do you recall whether there were any changes in Your Golden Future?

A None that I can recall.

MR. FLEMING: I don't understand the form of that question, your Honor.

Does he mean the film?

THE COURT: Any changes in what, in the script or --

Q In the film that you would show every night, doyou recall whether there were any changes?

A No, I don't recall.

Q Between 1968 and 1971, did the script that you used for the presentation change at all?

A From time to time, yes.

Q What kind of changes were those?

THE COURT: Which scripts are you talking about, the first script or the second script?

MR. DEVORKIN: I am talking about --

THE COURT: He has two presentations, I gather, one introducing the first film and one after dinner.

MR. DEVORKIN: I am sorry, your Honor.

Q When I say a script, Mr. Lederman, I mean the script for the presentation of the entire evening.

You say there were some changes from time to time for the script for that entire presentation.

What kind of changes were they?

A It was usually on the basis of things that were changing at Rio Rancho or in the Albuquerque area, certain things that were developed or plans that were made for the future.

Q Were there any changes in the regions you previously described for giving customers to buy Rio Rancho lots?

A No. The basic script was the same. It was just some facts that were changed or added to it.

Q Does that include 1972, when you were with SGR?

A Yes.

Q The introduction that was given to West Side Story referred to it as produced by an independent organization, correct?

A Yes.

Q What was the purpose of saying that?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q What was the reason that you said that?

A Because it was in the script.

MR. FLEMING: Wait a second. Wait a second, Mr. Lederman.

I object.

THE COURT: You mean why did he say what was in the script?

Q In the context of your selling to customers Rio Rancho lots --

THE COURT: He was given a script and he read it or he memorized it.

MR. DEVORKIN: Okay.

Q Did anyone ever tell you whether or not AMREP was involved in producing or writing West Side Story?

A No.

Q Did there come a time during the evening when you introduced the salesmen in the room?

A Yes.

Q How did you introduce them?

A I introduced them as my associates, all of whom were trained land consultants, particularly in the area of Rio Rancho Estates.

Q Were they trained land consultants, Mr.

Lederman?

MR. ARKIN: If your Honor please, is he asking about everybody or particular individuals or what? It is a very broad --

THE COURT: He is talking about the salesmen he introduced.

He says he introduced the group as being trained land consultants.

MR. ARKIN: There were seven hundred dinners and there may be many salesmen, that's the point.

THE COURT: And I assume he did the same thing at every dinner, because the testimony here is th if a salesman or a sales manager varied one ioat fr the script they fired him.

Q Mr. Lederman, were the salesmen that you were introducing as land consultants trained as land consultants?

A Not to my knowledge.

Q To your knowledge, did they have any background or training in investments or land investments?

A Some of them may have had, yes.

Q Did they get their training from AMREP?

A No.

Q Did they get it from ATC?

A No.

Q I believe during the dinner presentation you directed people's attention to This Is My Land; correct?

A Yes, we did.

Q Do you recall which pages?

A Pages 7, 8 and 9.

Q For what reason did you do that?

A Because 7, 8 and 9 had a great many facts and figures about the population, about land values and sales of different properties in the Albuquerque area.

Q Did you read any of the portions on 7, 8 and 9 to the customers?

A During the presentation I would generally take out two or three items as examples.

Q Let me show you pages 7, 8 and 9, and ask you which kind of items you took out as examples.

A On page 9, we would take two or three examples of properties that had been purchased at one price and sold at a higher price.

Q Did you personally have any knowledge about the land sales examples mentioned in the brochure or that you read?

A Only from the brochure.

Q Did you personally know where those parcels of land were in relation to Rio Rancho?

A No.

Q I believe prior to showing Your Golden Future, you made another set of remarks, correct?

A Yes.

Q And one of the items referred to there is AMREP has a successful community development in Florida, is that correct?

A Something like that, yes.

Q To what development did that refer, if any?

MR. FLEMING: I object, unless it was said.

THE COURT: Show it to him.

He said he referred to it.

Q Did it mention the name of the development?

A No, it didn't mention it.

MR. FLEMING: May I have a voir dire on this particular line of inquiry?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. FLEMING:

Q Do you have the script?

A No.

CONTINUED DIRECT EXAMINATION

BY MR. DEVORKIN:

Q Do you know which development that referred to?

A Yes, although it was not written in the script.

Q Who told you which development it referred to?

MR. FLEMING: I object to it.

Did he state it or not? That is what I can't understand.

THE COURT: He said it was not written in the script, but he stated it.

THE WITNESS: No, your HOnor, I didn't state the name of it, just what was in the script mentioning Florida.

THE COURT: So he is bound by the script, then.

MR. DEVORKIN: Right.

THE COURT: And there is nothing in the script.

Q Did anybody from ATC or AMREP tell you which development that referred to?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Yes. I had asked either Leonard Geller or Peter Miller and they told me it was Rainbow Lakes Estates.

Q Did you have any personal knowledge about

Rainbow Lakes Estates?

A No.

Q I take it after Your Golden Future, you gave a final speech, is that correct?

A Yes.

Q What was the purpose of that final speech?

A The purpose was to motivate the people to purchase property that night.

Q Why that night?

A Well, we found from experience that if people did not buy the same day, they very rarely bought later on.

Q How did your final remarks of the evening achieve that purpose?

MR. FLEMING: Objection.

THE COURT: Overruled.

He can tell us.

MR. FLEMING: My objection is --

THE COURT: He is the fellow who made the pitch. He knows why he is giving it.

MR. FLEMING: That is a different question.

He said, how did it achieve it? I understand that to mean, what was the hearing or doing it? I don't understand how he could know that

THE COURT: Whether he was successful or not?

You can ask him what words he used to try to achieve it.

MR. FLEMING: I don't mind that question. I thought the question was calling for what the impact was. I don't think this witness knows.

Q Mr. Lederman, what parts of your final speech were designed to achieve that purpose?

A The entire part of that speech from starting off with bringing them up to date as to the latest developments at Rio Rancho, going over the refund guarantee, reading the refund guarantee in the contract, going over the allocation sheet, taking one item as an example and reading it and comparing it to prices of adjoining properties and talking about the fact of the growth of the area and, again, repeating the fact that the growth was going in the direction of Rio Rancho and talking about the potential to make profits there.

Q What, if any, indication did you give about when Rio Rancho would be completely developed?

A Well, we didn't specifically state anything about when it would be completely developed. The only thing that we spoke about as far as a date was concerned --

MR. FLEMING: I object, your HOnor.

I am sorry. I thought that was an answer.

THE COURT: That is what I thought.

MR. DEVORKIN: I think the witness can expand upon that, your Honor.

THE COURT: You put questions to him and we will find out if you put proper questions.

You put a question and he has answered it.

MR. DEVORKIN: Okay.

Q You said there was no specific date given, is that correct, Mr. Lederman?

A Yes, sir.

Q Did you give the customers any indication of when the complete development would occur, that is, the development of the entire property known as Rio Rancho Estates?

A No, we didn't discuss any date when it would be completed as far as development is concerned, only as far as --

MR. FLEMING: Your Honor, that is the answer.

THE COURT: Right.

Q What did you discuss with respect to that?

MR. FLEMING: To what?

THE COURT: With respect to what, Mr. Devorkin?

Q With respect to when Rio Rancho would be finished, when it would be a fully developed community.

MR. FLEMING: Asked and answered.

THE COURT: He said twice now that he never stated when it would be completely developed.

MR. DEVORKIN: I agree.

Q I am just asking, what did you discuss with respect to that if you didn't discuss a date?

MR. FLEMING: I am sorry --

THE COURT: Did you have any discussion as to the complete development of Rio Rancho, when it could be expected?

THE WITNESS: We only discussed the potential population growth of the area.

THE COURT: No, that is not what you are looking for.

Next question.

Q What do you recall saying about the potential population growth of the area?

MR. FLEMING: Asked and answered, if your Honor please.

THE COURT: No, he has not. I stopped him in the middle of the answer.

MR. FLEMING: I mean about twenty minutes ago.

THE COURT: No.

Q What did you say about that, Mr. Lederman?

A That by about 1980 there would be an additional 200 to 250,000 additional people coming to the area.

THE COURT: What area?

THE WITNESS: To the Albuquerque area.

THE COURT: He is not talking about that. He is talking about the development of Rio Rancho.

Let's go on to something else.

Q Did you say anything about where those 250,000 or 300,000 people would live?

MR. ARKIN: Objection, if your Honor please. Your Honor just sustained it.

THE COURT: Overruled.

A Part of the presentation was that the growth had to be in the direction of Rio Rancho and these people would be forced to live in Rio Rancho or going through Rio Rancho.

Q After the speaker finished his final remarks, what, if anything, were the sales people trained to do at that point?

A They were trained -- they were supposed to applaud and then call a hold on a specific piece of property.

THE COURT: Let us adjourn for lunch.

See you at 2:15.

(Jury left the courtroom)

MR. FLEMING: Your Honor, I have to be before Judge Owen at about 2:15 for a disposition. Mr. Lauer will be here and I should be back, I would think, within ten or fifteen minutes.

THE COURT: All right. Mr. Lauer is a member of your firm?

MR. FLEMING: Yes, sir.

He is an associate.

THE COURT: A qualified associate?

MR. FLEMING: Extremely.

(Luncheon recess)

pm

AFTERNOON SESSION

2:15 P.M.

(In the robing room)

MR. DEVORKIN: This is my application, your Honor. It is not really an application, we want to be very careful today with Mr. Lederman to not in any way, shape or form violate any directions of your Honor's not to ask specific questions of a witness.

I am not asking you for an advisory ruling but I did want to let the Court know that because Mr. Lederman is a sales person with some responsibility like Mr. Mandel I did intend at some point during my questioning in the afternoon to put to him exactly the questions I put to Mr. Mandel and which your Honor permitted me to put to Mr. Mandel as to whether he knew certain facts.

I may have misunderstood your Honor's rulings the other day and I want to make sure I didn't violate them this afternoon. I just wanted to make you aware of that.

THE COURT: You are talking in a vacuum. I don't know what you are talking about.

MR. DEVORKIN: Specifically I am talking about the questions I asked Mr. Mandel at page 908 of the transcript, lines 9 through 20 and page 909 of the transcript lines 4 through 9 and the questions, if your Honor please, were as follows:

"Mr. Mandel, did you know that Albuquerque City Planning Commission had produced a study discussing the growth of Albuquerque and the direction of its growth?

"A No, I did not.

"Q Did you know that AMREP Corporation had a copy of that study?

"A No, I did not.

"Q Did you know that in 1965 AMREP Corporation had commissioned a report from a company of land planners in the southwest which discussed the growth of Albuquerque and the direction of its growth?

"A No, I did not."

Then at 909 line 4:

"Q Did you know AMREP Company had told anyone that it did not expect more than five percent of the Rio Rancho purchasers to move to Rio Rancho?

"Mr. Arkin: Objection.

"The Court: Overruled."

THE COURT: Obviously, this is the man who said he wrote the stuff. This is just a fellow you have got on the stand now a sales manager who does only what he is told to do written by Mandel.

I allowed Mandel to be asked as to what Mandel's knowledge was when he wrote the material. Perfectly obvious it comes in from Mandel. It does not come in from some fellow who is repeating by rote what was handed to him.

MR. DEVORKIN: He was following instructions, I agree, but he was giving the presentation --

THE COURT: He was reading exactly what he was told and if he didn't read he was going to be fired. That is what Mandel said.

I allowed you to ask Mandel those questions because Mandel says, I am the man who wrote this stuff.

This is what you are basing your case on, what he wrote.

MR. DEVORKIN: Right.

THE COURT: You are entitled to ask him what his knowledge was about certain things because he is the guy who did it. But the sales manager outside, there is a puppet. I won't let you ask him the question. He is only being given material which he must read, don't deviate, not even the jokes can be changed.

MR. DEVORKIN: I understand your Honor's ruling and I will follow it.

I assume that ruling applies at this point strictly to my direct examination depending what develops on cross with respect to Mr. Lederman's knowledge and intent.

THE COURT: Mr. Lederman had no knowledge, no intent. Mr. Lederman was paid the same as the salesmen were paid.

Here is the pitch. This is what you give. Don't deviate from it.

Not an iota.

That is your proof that you brought out.

MR. DEVORKIN: I understand, your Honor. I am saying if there is cross examination --

THE COURT: That is all he said. Unless you can show he said something else, yesterday you attempted to show there was a three to seven year limit put in, it was ridiculous. It wasn't in the script. You couldn't find it in the script.

That would have been a material change from what the promises were supposed to be. You said the script was always the same. You have got this man to say it was always the same except in minor variations such as if you built a golf course in the last two years they talked about the golf course.

MR. DEVORKIN: I understand your HOnor's ruling. If Mr. Lederman is cross examined on the basis of his beliefs and the company's intentions, his beliefs in what he did, his belief in what the defendants were doing and there intention, which was the cross examination of Mr. Mandel and Mr. Zaknich to some extent --

THE COURT: If he is going to be asked those questions, you can ask him because if he did know despite this, it is something else.

In other words, if you ask the man, is this the belief --

MR. ARKIN: I have the point, your Honor.

THE COURT: He is entitled to have a redirect on the basis of his belief.

MR. ARKIN: I have no fault with that. If I smiled at all it was only when your Honor seemed to suggest that he may have known to the contrary about the growth of Albuquerque. We disputed, in other words, the prosecution's assertions that Albuquerque wasn't growing to the northwest and that Albuquerque wouldn't have an impact.

I didn't mean to suggest at all that I would open the door for redirect examination. I certainly wouldn't do that.

THE COURT: What Mr. Devorkin is saying is that if you slip on the banana peel, he wants to jump on top of you and I say he can.

MR. ARKIN: If Mr. Devorkin wants to jump on top of me, I will do everything I can to avoid that you can be sure, your Honor.

THE COURT: Okay.

MR. DEVORKIN: Thank you, your Honor.

(In open court - jury present)

MORTON LEDERMAN, resumed.

MR. DEVORKIN: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. DEVORKIN:

Q Mr. Lederman, before lunch I believe you testified that one of the things the sales people were trained to do after the speaker finished his closing remarks was to applaud and then call holds on property.

Would you explain to the jury how the calling of holds worked at the dinners that you supervised and ran?

A The idea of calling a hold was to pick a specific piece of property, which that sales person would try to sell to the people he was sitting with. Then they would explain why they called the hold on that specific piece of property and try to sell it.

Q What was the purpose of calling the holds out loud?

A To create the idea of immediacy as far as the sale was concerned and to designate the specific piece of property.

Q Did more than one sales person ever place holds on the same property?

A At times, yes.

Q What did you do as the manager when that happened?

A I would recognize them in order and the one who would call it for a second time would be given a second hold on it or at times a third hold.

Q When there was more than one hold on a piece of property, were each of the sales people free to sell that particular piece of property still?

THE COURT: What was that question?

Q When more than one hold was placed on a particular piece of property, there was a first hold, a second hold, a third hold, were the sales people that had one of those holds on that piece of property free to sell that piece of property to their customer?

A Yes, the first one who would get a commitment for that would get the property.

THE COURT: Let me get this straight.

Mr. Devorkin yells hold first on property 897, all right.

Mr. Arkin yells hold third on property 897.

THE WITNESS: Yes.

THE COURT: Or second. I yell hold third. Can I sell it before either of those sell it?

THE WITNESS: Yes, your Honor.

Q What criteria were sales people trained to use in selecting a piece of property to sell to a particular customer?

A They were trained to choose a piece of property that they thought the people could afford on a monthly basis to pay for.

Q Were they trained to say anything to the customer about the particular piece of property they had selected?

A Yes, they were told to give the people a specific reason as to why they chose that piece of property.

Q What reasons were they trained to use?

A Well, there were several reasons that they could use or they could create their own reason such as they know this particular area or they feel that this is the best piece of property on the allocation sheet or any other reason that they might think of.

Q Had all of your sales people been out to Rio Rancho Estates?

A No.

Q Were the reasons that they gave to the customer with respect to a particular lot necessarily accurate?

MR. ARKIN: Objection, your Honor. It calls for a characterization.

THE COURT: Right. Sustained.

Q Do you know whether there was a basis in fact necessarily for the reason being given to the customer by the sales person?

MR. ARKIN: Same objection.

THE COURT: I don't understand it. The objection is sustained.

Q Mr. Lederman, if a sales person -- withdrawn.

What were some of the reasons that a sales person gave to a customer for selecting a particular lot again?

A One might be that they knew this particular area.

Another one might be that this area was more of a choice area than another one.

Another might be that sometimes that they had property in that area themselves.

Q Take the reason that this particular lot is in a choice area as opposed to other lots. Was that necessarily so of any particular lot on the allocation sheet?

MR. ARKIN: Objection, your Honor. I really don't understand the point of the question.

THE COURT: I think I know what he is trying to do, but I think he ought to try another way.

MR. DEVORKIN: I will try, your Honor.

THE COURT: When a salesman told a customer that he, the salesman, owned property nearby, that was your third statement, right?

THE WITNESS: Yes, your Honor.

THE COURT: Would that be a true statement by the salesman?

THE WITNESS: Sometimes.

THE COURT: How frequently?

THE WITNESS: I really don't know because I didn't hear their reasons when they were given. I wasn't at the table with them.

MR. ARKIN: Your Honor, based upon that testimony --

THE COURT: Wait. You mean then these three reasons you gave us you have never heard a salesman use?

THE WITNESS: Yes, I have heard them used from time to time, but I worked with five or six or more sales people and more often than not when they gave their reasons I was still at the podium.

Occasionally I would hear the reason.

THE COURT: So occasionally you heard these three reasons given?

THE WITNESS: Yes, your Honor.

THE COURT: That's what the jury wants to know. Were they told to give these reasons or did they dream these reasons up as a means of trying to convince a customer to close the property?

THE WITNESS: Well, the subject came up at general meetings and sales people would ask at these general meetings how to go about this and in conversation among sales people and with the manager, Mr. Miller and Mr. Geller, these were among some of the reasons given or to pick a reason of their own.

THE COURT: But these three that you gave us were reasons that were advanced at the sales meeting to a particular salesman that he could use this approach to see if he could sell the property?

THE WITNESS: Yes, your Honor.

THE COURT: And, therefore, it would not

necessarily be true that the salesman who picked reason number 3 in fact owned any property?

THE WITNESS: Yes, your Honor, that's true.

THE COURT: All right.

Let's go through the other two. What about choices?

THE WITNESS: Well, there were some sales people who personally had a preference for one area over another and they would generally, if any property were available in that area, choose a piece there.

THE COURT: You mean because they really believed it was choice as opposed to something else?

THEWITNESS: Yes.

THE COURT: All right, what was the third one? The third one was the first one that you gave?

THE WITNESS: It was similar, that they knew that particular area.

THE COURT: And?

THE WITNESS: Sometimes it was true and sometimes it wasn't.

THE COURT: All right.

Q Mr. Lederman, how were sales people trained to close the contract?

A It was what we would call an assumption close meaning that they would assume that if people were going to buy, it was just a matter of which piece of property and after giving the reason why they chose that particular piece of property, they would say something to the effect of, now I want to show you what it looks like on paper and go directly to the contract.

Q What would they do with the contract?

A They would start filling it in.

Q Did the team manager ever get involved in making a sale?

A Yes.

Q What was that called?

A That was called a TO or takeover.

Q How did a takeover work and why was it used?

A It was used when a sales person thought that the people were interested but they could not for one reason or another close the contract. They would call the manager over to the table, explain -- introduce him and then explain what the problem might be and at that point the manager would try to continue making the sale.

Q Did the manager either at a sales table or from the podium use the allocation sheets in any way to assist in the closing?

A Yes, from the podium.

Q What would he do with the allocation sheet to assist the closing?

A It was part of the closing statement from the podium to use the allocation sheet and ask the sales people to hand a copy of it to each of the people at his table and take one item from the sheet and read it across, item by item, as an example some people would understand what it meant.

Q What would you say about a particular item, how would you do that?

A Well, you would start out with the item number. Usually there would be anywhere from 10 to 15 pieces of property on the allocation sheet. You would take an item number, let's say 2 or 3, and mention the size of the property, let's say two acres. You would give the price for the two acres.

Then the next column was usually a discount price for multiple purchase and then the net price at which point you would compare it to property -- let's see, I am trying to remember the script -- it said something like just across a 50 foot road from Rio Rancho where property was selling for higher amounts.

Then we would go into the monthly payment and compare it to putting that amount of money, whether it was

$80 or $90 into a bank or into a savings account or into a mutual fund as opposed to putting it into land.

Q Was there a concept called deletions?

A Yes.

Q What was that concept?

A After the holds when people were trying to sell the property, when a sales person had a commitment from a customer to purchase that particular piece, I would be called to delete the property so that other people would not try to sell the same piece of property.

Q Were the deletions called out loud at the dinner?

A Generally they were called over the microphone, yes.

Q Were the deletions that were called always accurate?

A Not always, no.

Q Explain how they wouldn't be accurate and when that would occur.

A The only times at which they would be accurate would be if a period of time went along and no one made a commitment to buy a piece of property and people were leaving, one of the sales people whose potential customer had left would come over and hand me a blank contract or a partially filled contract at which time I would delete that particular piece.

Q Would you announce that deletion to the group?

A Yes.

Q Did you receive any instructions from anybody with respect to using that practice?

A I don't recall specific instructions, but these are things that were discussed at meetings.

Q At general sales meetings?

A General sales meetings, yes. Also managers meetings.

Q Did you sell additional property to home site owners at these weekday night dinners?

A Yes, we did.

Q What kind of property was that?

A It would either be property from the allocation sheet or sometimes it would be a parcel of commercial or multi-dwelling property that was not on the allocation sheet.

Q Generally speaking, how did the price of commercial or multi-dwelling property per acre compare to the price of residential property?

MR. ARKIN: Objection.

THE COURT: Overruled.

A Generally it was substantially higher.

Q Was there an exchange privilege on the commercial or multi-dwelling property?

A No.

Q When you left ATC in 1971, do you recall how many homes there were at Rio Rancho?

A When I left there I don't recall how many homes there were out at Rio Rancho at that particular time, no.

Q Do you recall how many there were in 1969?

A When I was at Rio Rancho in 1969, I think there were approximately 200 homes.

Q Where were those homes located?

A In what was known as unit 16.

Q When you worked for ATC, did you know the size and acreage of Albuquerque?

A Not that I can recall, no.

Q Was it larger or smaller than Rio Rancho, if you recall?

A I don't know.

Q Do you recall whether customers were given any comparisons by their sales persons about acreage in Albuquerque and acreage in Rio Rancho?

A Not that I know of.

Q You have said that there were sales meetings with sales persons I believe once a month?

A Approximately, yes.

Q Who conducted those meetings?

A Peter Miller and Leonard Geller.

Q Just generally, what were the purposes of those meetings?

MR. ARKIN: Objection. He has asked and answered that.

THE COURT: He answered that before lunch.

MR. DEVORKIN: I think that's right. I am sorry, your Honor.

Q When a customer signed a contract at a dinner and became a home site owner, what, if anything, happened next?

A At the dinner?

Q Yes.

A Well, I instructed my sales people that I wanted to be called over to the table before the people left so that I could check out the papers that were signed and to talk to the people for a little while.

Just before they left generally the sales person would invite them back to another dinner within two or three weeks.

Q Were they given any materials at that time after they signed the contract?

A Yes.

Q What materials?

A They were given a package in an envelope that consisted of the property reports, the fact sheet, various and sundry brochures, a copy of the flight tour schedule and whatever other papers that the sales person wanted to give them.

MR. DEVORKIN: May I just have a moment, your Honor.

(Pause.)

Q Mr. Lederman, showing you what is Government's Exhibit 146-O in evidence, a sales contract signed by David Jones, there is a portion of the contract which reads -- it is actually the third paragraph up from the signature portion of the contract:

"I/we acknowledge receipt of copies of the restrictive covenants, the property report filed with the office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development and any applicable public report, offering statement or prospectus required by state authorities."

Then there is a place for buyer's initials. Do you see that?

A Yes, I do.

Q Were sales people given any instructions or training about what they were to do or say to the customer when they got to that part of the contract in the process of filling the contract out?

A Basically to tell them that this was -- they were initialing this for all the materials that they were going to get to take home with them.

(Continued on next page.)

Q After the customer bought and the dinner was over, did the sales manager have any practice of contacting the customers after their purchase?

A Yes.

Q When did that occur?

A Generally, the next morning or afternoon when he came into the office, we had a form. We were to call the customers and check with them as far as their name, address, whether they had a chance to read the material, if they had any questions, to let them know that we were available to call if they did have any questions now or in the future and that the salesman would be in touch with them in the immediate future as far as inviting them out again.

Q Was there any other purpose of that call?

A Well, it had several purposes, I believe.

One was, if there was what we call buyer's remorse and people would let us know that they had a problem or they stopped payment on the check to see if we can revive their interest in it.

Another was to see whether there are any questions, if people had mild doubts about something, to see if we could ease their minds on it and also to let them know after a sale was made we weren't just dropping them.

Q Did ATC have any special dinners for property owners?

A Yes, we did.

Q And when were those dinners held, what day of the week?

A Usually, they were on a Sunday afternoon.

Q Do you recall when in your period of time with ATC those dinners began?

A They began shortly after I started working there.

At the beginning they were smaller groups. Sometimes two or three teams would have a dinner together and the other two or three would have it elsewhere.

Eventually, it expanded into one large party for all the sales people in the office.

Q How large would these dinners get in terms of home site owners that attended?

A Well, there were at times several hundred people, up to three, 400, maybe 500 at times.

Q Generally speaking,what kind of establishments were these dinners held at?

A When they were larger, they were usually in some of the major hotels in New York.

Q What was the purpose of holding these home site owner dinners?

A The basic purpose was to sell additional property.

Q Did the ATC staff hold any meetings before the dinners began?

A Yes, we did.

Q When would those meetings be held, usually?

A Well, we had a short meeting the same day as those dinners were being held, an hour or two prior to the people coming in.

Sometimes we would have a general meeting in the office during that week, but we would always have a small -- the team meetings about that during the week as well.

Q What would you do at these meetings? What was the purpose of these meetings?

MR. ARKIN: What meetings, your Honor? There are several meetings the man described.

THE COURT: I am getting a little lost on these meetings.

Q You said there were two kinds of meetings, Mr. Lederman, or am I mistaken?

THE COURT: How frequently did your team meet?

THE WITNESS: Well, my team would meet as often -- we had no specific times for a team to meet. We did have generally once a month a meeting for all sales people at

ATC in the office.

THE COURT: That is one type of a meeting.

What other type of meeting are there?

THEWITNESS: There were times we would call a meeting for a specific purpose, either some additional news had come up or a price increase was imminent or just to find out how many people each of these people were expecting on a specific day so we could plan accordingly.

THE COURT: Any other types of meetings?

You mentioned something about Sunday meetings.

THE WITNESS: Well, what we would do is get together about an hour, an hour and a half prior to the invitation time to the customers at the hotel and go over the final count of approximately how many people we expected so that we would know how to organize the tables, go over the allocation sheet for that day and generally get some idea as to how many people who were expected already owned property and how many of them were guests of people who owned property.

THE COURT: Go ahead.

Q Mr. Lederman, were there any discussions at the meetings immediately preceding the home site owner dinners about special items of property that weren't on allocation sheets?

A At times there was discussion of that, yes.

Q What was the nature of those discussions? What was said about those items?

A Well, it was Peter Miller or Leonard Geller would advise us as to what properties, additional properties, we had with us at the time in the event that anyone needed it.

If we had any commercial or multi-family properties available, to inform the sales people that we were available so if they had someone who was interested in purchasing it that they could have it.

Q How would those particular properties -- withdrawn.

Were the properties, the commercial or multi-dwelling properties, or the properties generally available at home site owner dinners any different than the properties available at weekday night dinners?

A Well, during the weeknight dinners, generally we did not have any multi-family or commercial properties available.

The property that we had on the Sunday, if possible, would be in a fairly new unit which was -- we may or may not have been selling during the week as well, but we had a great deal more property available on a Sunday than we had during the week.

Q Aside from its location, was there anything different about the property, residential property, that was available on Sunday as opposed to weekday nights?

A Generally, no.

Q Was it necessarily any closer to the developed area?

MR. FLEMING: I object, your Honor. He has answered the question.

THE COURT: Sustained.

Q How were these Sunday home site owner dinners run?

MR. ARKIN: Objection, your Honor.

THE COURT: I think you ought to get a little more specific than that.

Q What happened when the customers arrived at the hotel?

THE COURT: Was there anything different from this?

He already spent a half hour or an hour telling us what he did on the regular ones. We don't want that all over again.

MR. DEVORKIN: No.

Q Mr. Lederman, was there anything different about the home site owner dinners from the weekday night dinners?

A Yes. It was run differently.

Q In what sense?

A During the week, the sales people were not allowed to sell any property until the entire program was over.

At these Sunday dinners, they would start selling almost immediately.

On Sundays, most of the time we offered the people one drink before dinner; during the week we didn't allow any drinks into the room at all.

The program was run differently as well. Usually there was no program before dinner on Sunday. The entire program was scheduled after dinner.

Q When people began to sell to the customers immediately, what did they do? How did they go about selling immediately?

MR. ARKIN: Your Honor, I don't understand, "How did you go about selling immediately?"

I object to the form of the question.

THE COURT: I assume they have to warm the fellow up a little bit.

MR. ARKIN: That is a good answer, your Honor. The question could be put.

THE COURT: The objection is overruled.

A Generally, the people we were selling to immediately were generally people who were friends of people that owned property and they were pretty much aware that they came there to buy property.

After some conversation with them, they would -- the sales person would take this couple to another table and sit down with the contract and go over everything and try to sell a piece of property.

Q Did the sales people ever make available to customers anything they called special or special property?

A If we had something available, yes.

Q What did you categorize as special? What was that?

A Well, that would vary.

Sometimes it could be a piece of property that was closer to the development area, sometimes it could be a piece that was near the golf course, sometimes it would be a piece of property that was near where their friends owned property.

It's hard to say what, there were so many different instances.

Q Was it ever property that simply wasn't available during the week and that was the difference between it -- that was why it was special?

MR. ARKIN: Your Honor, I suggest it is a leading question.

THE COURT: Sustained.

Q Did you have any conversations with Mr. Miller or Mr. Geller about property that was being called special?

A Yes, I've had conversations with them.

Q Do you recall when those particular conversations occurred?

A No.

Q Did they occur from time to time?

A From time to time.

Q What did they say about the property that was being called special at home site owner dinners?

MR. FLEMING: I object, your Honor.

THE COURT: Change the form of your question.

Q Well, what did they say to you about that subject, if anything?

MR. FLEMING: I don't understand it. I object to it.

THE COURT: If the witness doesn't understand, he can say so.

A Would you repeat the question, please?

Q You said you had conversations with Mr. Miller and Mr. Geller about the property that was sold at Sunday dinners as special property, correct?

A Yes, yes.

Q What did Mr. Miller and Mr. Geller say to you about that subject?

MR. ARKIN: May we have a time, your Honor?

THE COURT: He says he can't give you a specific time. It was from time to time.

MR. ARKIN: Any particular --

THE COURT: As he gives each answer, maybe he can tell us when.

A I can't tell when because I had conversations with them continuously over the period of years that I was there and I couldn't pinpoint any specific conversation on that.

It is just, in general, during the presentation, when Mr. Miller made it, he usually said something to the effect that --

THE COURT: Wait, wait, wait. We are not asking about what Mr. Miller did at a presentation in front of the invitees, we are talking about any conversations he had alone with you or other salesmen regarding -- do they call them Sunday night specials? I hate to use that.

THE WITNESS: That was Sunday afternoon.

THE COURT: Sunday afternoon specials?

THE WITNESS: Sunday afternoon specials.

Sometimes I was told it was just a matter that this was the property that was available at that specific time.

THE COURT: That's all?

THEWITNESS: Sometimes, yes.

THE COURT: Anything else?

THE WITNESS: Well, sometimes it would all be in one area that had just opened and had not been available for sale before.

There are so many different occasions that we had these dinners, it's hard to pinpoint specifically an exact reason each time. It wasn't discussed all the time.

THE COURT: All right.

Q Mr. Lederman, aside from reasons that they were given for the property, did Mr. Miller say anything about this so-called special property?

MR. FLEMING: Objection.

THE COURT: Overruled.

A I really don't recall if he said anything specific about this property.

THE COURT: I think you ought to go to something else.

MR. DEVORKIN: Yes, your Honor.

Q How was multi-dwelling and commercial property sold at the Sunday dinners? How did the salesmen actually go about selling it?

MR. ARKIN: Your Honor, again, if he asks what was said or what was not said -- what was said, rather, that might be an appropriate question.

This is open-ended.

I object to the form.

THE COURT: Objection sustained as to form.

Q What was the salesman trained to say, if anything, about commercial or multi-dwelling property?

MR. ARKIN: May we have a period about that? This man had several periods of employment.

THECOURT: I will let it go. It is practically the same. He said it didn't vary much from year to year except in minor instances.

A Well, generally, they would tell the people that there was very little of it, we only would sell it to someone who already owned residential property and they would sell it.

Q Was the commercial or multi-dwelling property on the allocation sheet at the Sunday dinner?

A No.

Q How did the salesmen go about getting a commercial or multi-dwelling lot to sell?

A One of the managers generally had the information written down, carried it in his pocket.

Q What would the salesman do, if anything?

A They would call us over and ask us for it.

Q And then what would happen?

A Then they would write the contract.

Q Were there other ways that salesmen were trained to sell additional property to home site owners at Sunday dinners?

THE COURT: In addition to everything you have told us so far.

In other words, did you leave anything out?

THE WITNESS: Well, we did have what was called a multiple discount.

When people bought additional property, there was a reduction in the price based upon how much property they already owned.

Another way -- it wasn't necessarily at a Sunday dinner, it could be during the week as well.

Another way would be if someone were going to be moving out to Rio Rancho in the immediate future, we would show them that they could keep this property and purchase an additional half acre with a multiple discount to trade into the area in which they would be living.

(Continued on next page.)

pm

Q Were salesmen trained to say anything with respect to why the customer should keep the lot he already had and buy an extra lot to exchange in?

A Well, to keep what they had--

MR. ARKIN: Your Honor, again, the form of the question is very --

THE COURT: Sustained.

Q When a salesman used that approach to sell extra property, was there anything else he said to the customer?

A Well, usually he would tell them to keep what they already owned for investment and buy the additional piece to exchange into the living area.

Q You said there was a presentation after dinner at Sunday dinners, correct?

A Yes.

Q Was that presentation similar or different than the presentation during weekday nights?

A It was fairly similar.

Q Was it close similar?

A No. Usually the contract was not read, nor was an allocation sheet discussed from the podium.

Q Was it otherwise similar?

A Yes.

Q Were price increases used in any way to sell property to homesite owners on Sundays?

A When they were -- at times, yes.

Q How was that used?

A Well, we usually were informed two or three months prior to a price increase that there was going to be one, and the sales people would talk to their customers from the point of view of purchasing additional property before the price increase and also to bring in their friends to purchase before the price went up.

Q Was anything said as to what the price increase meant to the homeowner?

MR. ARKIN: I object, your Honor.

THE COURT: Sustained.

Q Was anything else said to the homeowner at the time the price increase was communicated to them?

A By whom?

Q By the salesmen.

A They would -- they sometimes would use the fact that the price increase was generally more than their down payment would be on the property so that before they would make their first monthly payment they already made a profit that was higher than their down payment.

Q Were previous price increases, price increases that had already occurred, used in any way to sell more property to homesite owners?

A Sometimes it was used, yes.

Q How was that used?

A Well, from the point of view that showing them the past history of how the price had gone up that the potential for it going up in the future was at least as good.

Q How frequently did you receive notices of price increases?

A Once or twice a year.

Q What were the amounts of those increases?

A They varied.

Q From what to what?

A I think they generally were between five and ten percent.

Q Who gave you notice of the increases?

A Usually it was Peter Miller or Leonard Geller.

Q Anyone else?

A I think we may have received a memo from Daniel Friedman.

MR. FLEMING: I ask to strike that, if your Honor please.

THE COURT: Sustained.

Q Do you recall receiving --

THE COURT: Strike it.

Q Do you recall receiving anything from Daniel Friedman with respect to price increases?

MR. FLEMING: Objection.

THE COURT: Overruled.

A I don't recall whether I did or not with ATC. I know I did with SGR.

Q When you were at SGR you did?

A Yes.

Q In what form did those notices take?

A Usually memo form.

Q Did you ever receive telegrams?

A Occasionally I -- we did, the office did.

Q When price increases were eminent, did salesmen receive any instructions about contacting their customers?

A Yes. We generally had additional property owner dinners scheduled during that period of time.

Q Did sales increase before prices increase?

MR. ARKIN: Objection, your Honor.

THE COURT: From his personal experience in this team he can tell.

MR. ARKIN: If it is limited.

A Generally they did.

Q I take it you were not personally involved in any of the decisions to raise prices?

A No.

Q What was the volume of sales or the range of volume of sales at homesite owner dinners?

MR. ARKIN: Your Honor, volume is a very difficult term.

Does he mean percentage of those attending or -- I object to the form of the question.

Q I mean dollar volume, Mr. Lederman.

What was the dollar volume of homesite owner dinner sales?

MR. ARKIN: I still object. We don't have a time.

THE COURT: You have the sales on those Sunday nights. While they may have been called homesite owner dinners, you also had non-homesite owners present.

MR. DEVORKIN: I understand, your Honor.

THE COURT: Are you worried about how many sales there were by homesite owners or anybody who attended a dinner at which a homesite owner was present?

They were present seven days a week sometimes.

MR. DEVORKIN: I am talking about the Sunday afternoon dinners, your Honor.

Q Sales made to anybody attending a Sunday afternoon dinner, do you recall the dollar volume of those sales or the range of dollars?

A They varied quite a bit anywhere from, say, 25,000 to over $100,000 at a given dinner.

THE COURT: And that would depend on the number present, also?

THE WITNESS: Yes, your Honor.

THE COURT: Strike it all as irrelevant.

Q Did you ever have any conversations with Mr. Geller about the resale of Rio Rancho property?

A Yes, there were some conversations.

Q Do you recall when those conversations were?

A They were early in my employment there.

Q What did he say to you about that?

MR. ARKIN: Your Honor, may we have that time fixed?

THE COURT: Yes.

When you say early, what do you consider early?

THE WITNESS: In either 1968 or 1969.

Q What did he say to you?

MR. ARKIN: Also, if your Honor please, the question seems to call for an opinion.

May it be rephrased so that the answer -- well, he asked him to characterize it.

THE COURT: I don't understand the question calling for an opinion.

Did he have any conversations with Mr. Geller regarding resale?

That is not an opinion.

Q What did Mr. Geller say about resales?

A Most of the conversation that we had was at general sales meetings based on sales people asking what to tell their propery owners about the resale of their property, and we were all told that we should have been sold out in a year and a half or two years, at which time we would have a resale office.

Q Were salesmen given any instructions about what to say to their customers about the resale office?

A That's what they were pretty much told to say, that we would have a resale office and that we would be selling the property for them.

Q Were they told to say anything else if their customers asked about reselling their property?

MR. FLEMING: Could we have your Honor's question was there anything else said?

I object to the question.

THE COURT: First of all, I have not got this.

Did Geller tell your salesmen that they were to tell a customer that they would be sold out in a year to a year and a half?

THE WITNESS: Something like that, yes.

MR. FLEMING: Your Honor, I move to strike it, your Honor.

THE COURT: What do you mean by that? What do you mean by "something like that"?

THE WITNESS: Well, it is not verbatim, but there were questions asked by sales people at general meetings since some of their customers had owned property for several years as to how they would go about selling their property, and we were told that at that point that we would be sold out in about a year and a half or two years, at which time that the company was going to open up a resale office and that we would be handling the resale of their property.

THE COURT: You say that Geller --

THE WITNESS: Or Miller.

THE COURT: -- or Miller said that you would be sold out in a year and a half to two years, at which point you would set up a sales agency to resell property?

THE WITNESS: Yes, your Honor.

THE COURT: There are two things involved in what you just told us; one, that you would be sold out in one and a half to two years; secondly, that when you were sold out you would set up an agency to resell the property.

THE WITNESS: Yes, your Honor.

THE COURT: Were you told by Geller to tell both of those things to the customer?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: It was also in answer to a questi that some sales people asked at these meetings as to what they could tell customers as far as how much property was left, and we were told to say that we were approximately ninety percent sold out, and then the rest of it was what I just mentioned before.

Q Mr. Lederman, were salesmen told anything else to tell their customers about that subject?

A Well, they were told that before that period of time, if someone wanted to sell their property, they could do it through a local broker in the Albuquerque area or by advertising in the local papers here.

Q There came a time, did there not, beginning in

1969 through 1971, Rio Rancho expanded by about 37,000 acres; correct?

A Yes.

Q And at the time, were you informed of -- well, withdrawn.

How, if at all, were you informed of that expansion?

A At a general meeting.

Q Mr. Miller or Mr. Geller made an announcement?

A Yes.

THE COURT: When?

THE WITNESS: I don't recall exactly when, your Honor.

THE COURT: Roughly.

THE WITNESS: It was probably somewhere in 1969, I would say.

Q Did the salesmen ask any questions as that time, when that announcement was made?

THE COURT: Questions about what?

Q About the announcement?

A Yes. They had questions.

Q What did they say?

A Well, one of the things that several of the sales people who had been there for a long period of time asked was, how do they explain to their customers who were told that it was going to be sold out shortly.

Q Did Mr. Miller or Mr. Geller say anything in response to those questions?

A Yes, but I don't recall exactly what they said.

Q In substance, what did they say?

A Well, in substance, something to the effect that there was such a demand for property that we bought this additional property to expand Rio Rancho.

Q What happened to the use of the -- withdrawn.

What happened to telling customers that there was going to be a resale office to sell their property?

A We stopped using that.

Q At that time?

A Approximately at that time.

Q Did you ever see any of the defendants at Sunday afternoon dinners or dinners that were called especially for homesite owners and their guests?

A Yes.

Q Which defendants?

A I recall seeing Mr. Howard Friedman one Saturday -- I think it was a Saturday or Sunday night dinner.

Q Do you see Mr. Howard Friedman in the courtroom?

A Yes.

MR. ARKIN: I will acknowledge that Mr. Friedman is Mr. Friedman.

Q Where was that dinner held?

A I don't recall the hotel. It was a hotel in New York.

Q In form, in content, how did that dinner compare to the other homesite owner dinners you have just described?

MR. ARKIN: If your Honor please, he said he didn't recollect any particular time and place. I object.

THE COURT: He said he saw him one Sunday night at a dinner. We all have been told now for two weeks that the presentation was exactly the same.

Q Was the presentation that night the same?

A Basically the same, yes.

Q Did Mr. Friedman say anything at that dinner to the customers?

A He was introduced at the podium and he said something, yes.

Q Do you recall what he said in substance or words?

A No, I don't recall.

Q Did he speak before or after the close?

A Before.

Q Did you have any conversations with Mr. Miller--

withdrawn.

Was this a special dinner of any kind?

A It was called a testimonial to Mr. Friedman.

Q Did you have any conversations with Mr. Miller about holding the testimonial dinner for Mr. Friedman?

A I asked what the occasion was. He said it was the same as every other dinner to sell more property.

Q Do you know what the VIP program is or was?

A There are a couple of different VIP programs.

Q Let's take them one at a time.

What is the first VIP program that you know of and when did it exist?

A It was during my first period of time with ATC.

Q Do you recall approximately when it began?

A Not exactly, probably around 1970, I would say.

Q Did you have conversations with Mr. Miller and Mr. Geller about it?

A We all did, yes. It was brought up at hte manager's meetings and general meetings.

Q What was the VIP program at that time?

A It was -- Daniel Monaco was in charge of the VIP program under Peter Miller and Leonard Geller and it was one in which the sales people would invite one or two of their customers to the office, people they thought would be interested in buying additional property and they had a buffet in the conference room after which Peter Miller, Leonard Geller or Daniel Monaco would talk to the customers privately in their office.

Q When was the second VIP program, if you recall?

A When I came back, I don't know whether there were any in between, but when I came back to ATC, there was one in operation there, Charlotte Masone was the manager of this group. Nick Masone and possibly two or three others were working with her where they would invite any of the property owners, they would call up the property owners and invite them to come up to the office to discuss selling them Eldorado property or exchanging their property into the Eldorado property.

Q Did they also sell Rio Rancho property to those people?

A If they could, yes.

Q Who was in charge of that VIP program, if you recall?

A It was Charlotte Masone.

MR. DEVORKIN: May I just have a moment, your Honor.

(Pause)

MR. DEVORKIN: Your HOnor, I would like to reoffer Government's Exhibit 535 which was initially offered through Mr. Bondy. It was accepted then and it was stricken when the testimony was clarified.

MR. FLEMING: For whatever reasons your Honor excluded this before, we object.

THE COURT: That is not good enough.

MR. FLEMING: To my recollection I see no difference in the foundation at this time than the foundation at the time the document was excluded.

MR. DEVORKIN: The difference is that Mr. Bondy --

THE COURT: Wait, stop arguing in front of the jury.

(Pause)

THE COURT: May I see counsel at the side bar.

(At the side bar)

THE COURT: Why should I let it in now?

MR. DEVORKIN: It was excluded after its initial admission, your Honor, because I believe on voir dire Mr. Bondy wasn't able to state that he knew about the VIP program that Charlotte Masone was involved in.

He talked about the earlier one --

THE COURT: That wasn't his objection.

MR. DEVORKIN: That is why it was excluded at the time. It was admitted into evidence and then Mr. Bondy was asked I think a question by the Court or someone else and it was clear that he didn't know about Charlotte Masone's VIP program and therefore your Honor excluded it because his testimony of the VIP program was a different VIP program.

Mr. Lederman has now testified about both VIP programs and it is clear that there is a foundation for it.

MR. FLEMING: We have already gotten 3500 material on this witness. She is going to be here.

THE COURT: That was the reason I excluded it.

MR. DEVORKIN: Your Honor admitted it at first.

THE COURT: That is why we got around to it. It was told to me that she was going to testify. Wait until she testifies.

(In open court)

BY MR. DEVORKIN:

Q Mr. Lederman, did you ever attend meetings with managers from other places in the country beside New York?

A Yes.

Q Do you recall when that was?

A It was -- exactly when, no. It was during the period 1968 to 1971. There was one meeting I attended.

Q Where was that meeting held?

A At 16 West 61st Street.

Q In whose offices?

A The AMREP office.

Q How many people attended?

A Possibly twenty. I don't recall the exact number.

Q Who were these other people, what were their positions?

A Most of them were managers of various offices.

Q Were ATC personnel also in attendance?

A The managers of ATC were invited to that one, yes.

Q The team managers?

A Yes.

Q Mr. Geller and Mr. Miller, were they there?

A Yes.

Q Did you see any of AMREP's officers at that meeting when you went to the meeting?

A Mr. Daniel Friedman was there. I saw Chester Carity outside the room before the meeting, but I don't believe he was at the meeting.

Q Did you have any conversations with or in the presence of Mr. Carity at that time?

A Just some remarks that he made as I and one of the other team managers came in or were going into it.

Q Into the meeting?

A Into the meeting.

Q By the way, do you see Mr. Carity in court?

A I don't know.

MR. FLEMING: He is here, your Honor. He is right here.

THE WITNESS: Oh, he is right behind there.

Q What did Mr. Carity say at that time?

A I was coming in with another manager, Morton Hochberg, and he said something to the effect that "Here are two superstars".

Q Then what happened, if anything?

A That was about it.

Q Did you go into the meeting then?

A Yes.

Q What, if anything, did Mr. Dan Friedman do at that meeting?

A He spoke to the people there. I don't recall what he said to them.

Q Did he stay for the entire meeting?

A I don't recall.

Q Do you recall how long he stayed?

A No.

Q Who addressed the meeting beside Mr. Dan Friedman?

A Mr. Peter Miller did.

Q In substance, do you remember what Mr. Miller said?

A Not really. It was just a matter of discussing the success that ATC had in selling property and the way in which we were doing it.

Q This was to managers from outside New York?

A Yes.

Q You mentioned that in 1971 you went over to New Jersey to work for SGR?

A Yes, I did.

Q What was your position at SGR?

A I was general manager.

Q How were you to be compensated in that position?

A I worked on a draw against overrides.

Q What was your override?

A I think it was two percent of volume, of net volume.

Q What was SGR's geographical jurisdiction?

A The State of New Jersey.

Q What did you have to do -- withdrawn.

Was SGR already in existence?

A Yes, it was.

Q What did you do initially when you went over there?

A The first -- there were two things I had to do initially. One was to look for office space to change the location of the office and the other one was to hire people at the same time that I was also speaking at a dinner party every night.

Q At SGR?

A Yes.

Q Did you have to get anybody's approval to rent new office space?

A Yes.

Q Whose approval?

A I worked through Peter Miller and Leonard Geller.

Q Did you get their approval?

A Yes.

Q After you got the approval to rent new office space, I take it you did rent the new space?

A Yes, we did.

Q Did you go to anybody else or anybody connected with AMREP in connection with that new office space?

A Yes, I was asked to show the layout, the office space layout to Daniel Friedman.

Q Do you see Daniel Friedman in court anywhere?

A Yes, I do.

Q Would you please point him out?

A Right over there (indicating).

With the maroon tie.

MR. DEVORKIN: May the record reflect that he has identified Daniel Friedman.

Q What was the nature of your conversation with Dan Friedman at that time?

A It was a discussion of the office -- of the floor plan of the office space as to how it was laid out.

Q Did you have to get anybody's approval for that?

A You mean other than Daniel Friedman's?

Q Including Daniel Friedman.

A I don't follow the question.

Q Who approved the office plan for that office?

MR. FLEMING: Is the approval of the office plan relevant? I object to it.

THE COURT: Overruled.

A Well, at first it was Peter Miller and Leonard Geller. When they thought the plan was worked out properly, I laid out the plan of it, then they asked me to take it to Dan Friedman for his approval.

After that, when he said it was all right, that was it as far as I knew.

Q You said that you also had to hire, I believe, and train sales people?

A Yes.

Q How many sales people did you hire for that office?

A The exact number I don't recall. I think the first group was somewhere about eight or ten people that I hired.

Q I take it you set up a dinner presentation program again?

A Well, it never stopped. It never stopped. There were a couple of people, two or three people working there when I went to SGR.

Q How did the presentation in New Jersey compare to the one that had been given in New York?

A Except for the elimination of one paragraph, it was the same script.

Q What was that paragraph?

A In the New York presentation we mentioned the fact that all the literature, all the materials had been filed with the State of New York and with the federal government.

In New Jersey I had been told that it was against the law to mention the State of New Jersey so we eliminated that entire paragraph.

Q Otherwise the presentation was the same?

A Yes.

Q Was there a broker of record for SGR in New Jersey?

A Yes, there was.

Q What were his responsibilities with respect to -- withdrawn.

What is a broker of record in New Jersey?

A A broker of record is -- since you must have a licensed broker who is responsible for the office and to sign all the papers for the Real Estate Commission, those were primarily his responsibilities.

Q That's what the New Jersey authorities required you to have, a broker of record?

A You can't have a real estate office without a broker.

Q What was the nature of your relationship in managing that office with the broker of record in New Jersey?

A I would call him whenever I hired new sales people and they made applications to the state for a license. The broker had to sign the applications. He also had to sign the licenses on terminated salesmen to send back to the state.

Q Did the salesmen take their application to that broker?

A No, he was too far away.

Q So what did you do?

A Most of the time we would mail it to him or occasionally he would come up to the office.

Q Did he attend sales dinners?

A Not to my knowledge.

Q Was there any kind of property report from the State of New Jersey?

A New Jersey had a one or a two-page report, yes.

Q How does it compare to the New York report?

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Do you recall what the New Jersey report consists of?

MR. FLEMING: I object to that, your Honor.

THE COURT: Sustained.

Q How long did you manage that office in New Jersey?

A Approximately one year.

Q What was your sales volume?

A The first few months it was very, very low until I was able to get some people licensed --

MR. FLEMING: Object and ask the answer be stricken, your Honor.

THE COURT: Sustained.

Q What was the dollar volume you had in the first few months?

A Probably no more than 25 or $50,000.

Q By the time the year was up?

A It varied between 150 and 300 some odd thousand a month.

Q Did you file any reports about your sales with anybody at ATC or AMREP?

A Yes.

Q With whom?

A With both.

Q These were things that you sent in?

A Yes.

Q Would you describe how it came about that you left SGR?

A Peter Miller and Leonard Geller --

MR. FLEMING: Object to that, your Honor.

THE COURT: Sustained.

Q Did you have any discussions with Mr. Miller or Mr. Geller about leaving SGR?

MR. FLEMING: Object to that.

THE COURT: Sustained. It is immaterial why he left.

MR. DEVORKIN: I am not a[illegible]ing why he left, your Honor.

THE COURT: Sure you did.

Q Do you know who made the decision for you to leave SGR?

MR. FLEMING: Objection.

THE COURT: You are assuming somebody fired him.

MR. DEVORKIN: No, I am not.

THE COURT: I am sorry. Something else.

Q Did you have any conversations with Mr. Dan Friedman about leaving SGR?

MR. FLEMING: Your Honor, I object.

THE COURT: Overruled. This is a conversation with a defendant which may have some bearing on this case, I don't know.

MR. FLEMING: Mine was just on relevance that I objected.

A Yes, I did.

Q What did you say to him and what did he say to you?

MR. ARKIN: Can we fix a time on this, your Honor?

THECOURT: Yes.

Q Approximately when was this?

A Thiw as somewhere around May of '72 or June, somewhere around there.

This was after I was back at ATC for a period of a few weeks and I resigned and I went -- when I went around the AMREP offices to say goodbye to people, I saw Mr. Dan Friedman and explained to him why I was leaving.

Q What did you say?

A Well, I said something to theeffect that I was told by Peter Miller and Leonard Geller that the reason they brought me back to New York was because Mr. Friedman felt that I wasn'g doing the job in New Jersey and it was his suggestion, Mr. Friedman told me that the SGR office was under the direction of Peter Miller and Leonard Geller and it was their decision and he wouldn't interfere in their decision since it was their job to run it.

Q Did he say anything else to you at that time?

A Well, he offered me a job in one of the other offices, but I told him I already made a commitment to someone else and we left on what I thought was a friendly basis that there was an open door that I could come back to work there any time.

Q Did you have any conversations with Mr. Howard Friedman when you left the company at that time?

A I stopped in to say goodbye to him.

Q What did he say in response, if anything?

A He said something to the effect that he thought I had done a good job with the company and he wished me luck and was sorry to see me go.

Q When you left what kind of work did you do?

THE COURT: I think that's immaterial.

Q You came back to AMREP, correct?

A Yes.

Q How long a period of time were you gone?

A About two years.

Q You came back in '74?

A Yes.

Q Who hired you back?

A Richard Gangel.

Q What was his position?

A I believe it was national sales manager.

Q Which office were you assigned to?

A The Chicago office.

Q Were you selling Rio Rancho or some other property?

A I was selling another property.

Q How long were you there?

A About six or seven months.

Q Then where did you go?

A I went back to New York and went to work for ATC.

Q What was your position at ATC at that time?

A It started out as -- it was supposed to be regional manager and then it was changed to assistant to the area director in charge of special projects.

Q Who did you work for?

A Leonard Geller.

Q What position did Dan Friedman have with the company at that time?

A I believe it was sales manager, vice president in charge of sales.

Q Do you recall a program called the fly and buy program?

A Yes.

Q Did you have any involvement in that?

A Yes.

Q What kind of involvement?

A Well, I helped to write the script for it. I hired a special group of sales people who were only going to be doing fly and buy selling and trained them.

Q Just previously what was it that you were selling in the fly and buy program?

A Briefly we were selling the idea of going on one of our tours without owning any property first with the idea when people went out there, they saw what they liked they would either buy land, a home or a condominium.

Q How long did the program last?

A A few months.

Q Was it a dinner party program also?

A Yes.

Q Was a presentation given at the dinner party?

A Yes, it was.

Q Did any of the defendants ever attend the fly and buy dinner party programs?

A I know of at least one who did.

Q Who was that?

A Howard Friedman.

Q On how many occasions?

A One or two at which I attended.

Q Did you have any discussions with Mr. Geller about Mr. Friedman's attendance?

A Yes, I asked him if there was any particular reason that he was coming to a dinner and he said, yes, he wanted to hear the presentation.

Q Did you give the presentations at those dinners?

A Yes, I have the presentation.

THE COURT: We will have a short recess.

(Recess.)

(Continued on next page.)

.PM

(In open court; just present.)

THE COURT: You may continue.

DIRECT EXAMINATION (Continued)

BY MR. DEVORKIN:

Q Mr. Lederman, I believe you said the fly and buy program was discontinued after a few months?

A Yes.

Q Why was that?

A It was not successful.

MR. DEVORKIN: No further questions.

CROSS EXAMINATION

BY MR. FLEMING:

Q Mr. Lederman, the fly and buy program that you have just testified about, did you testify that was limited -- the program you described was limited to individuals who did not own land at Rio Rancho?

A Yes.

Q Am I correct that there was another fly and buy program at Rio Rancho in connection with people who did own property at Rio Rancho?

A Yes.

Q And that was a program where home site owners, if we can refer to them as home site owners, who had not exchanged in to build a home were offered a trip down to

Albuquerque to make a decision as to when they would like to build a home?

A Yes.

Q Am I correct that they were told if they would put down a binder of about $200 against the construction of a home and come down to Albuquerque and look at their land again and look at the development at Rio Rancho again, if they made a decision to build a home at Rio Rancho then their expenses of that trip would be applied against the purchase of the house?

A I was not familiar with that program, no.

Q All right.

You do recall, though, that there was a fly and buy program which was designed to reach persons who had purchased property at Rio Rancho but had not yet exchanged property in to build at Rio Rancho?

A Yes.

Q And the purpose of that program was to encourage home building at Rio Rancho?

A And also to see the property they had purchased even though they weren't ready at the time to build a house, yes.

Q Are you confusing what I am asking you about with what the refund privilege was?

A Well, the only other fly -- well, the only other tour program that I am familiar with is the one in which people went down there to see their property.

Q That is the tour program connected with the refund privilege on the contract?

A Yes.

Q So you are not familiar with another fly and buy program?

A No.

Q You testified that you were in New Jersey for a period of time running the Rio Rancho brokerage or agency in New Jersey.

A The SGR it was named.

Q Then you were brought back to New York for a period of time?

A Yes.

Q Then you were let go?

A No. I resigned.

Q You resigned. And you resigned because Lenny Celler had told you that Daniel Friedman was dissatisfied with your performance in New Jersey?

A I resigned because I was brought back from New Jersey, yes.

Q Did you testify this afternoon that Lenny Celler told you that Daniel Friedman had brought you back from New Jersey because Daniel Friedman was dissatisfied with your performance?

A That's what I was told.

Q And when you went to see Daniel Friedman to say goodbye, he said that was not the case at all?

A Yes.

Q You testified the only difference between the presentations in New Jersey and the presentations by ATC in New York was the elimination of any reference to the State of New Jersey?

A During the time that I was running SGR, yes.

Q Yes. We are only talking about thetime you were running it.

A Yes.

Q And you say that deletion was made because the law of the State of New Jersey did not allow such a reference?

A Yes.

Q The law of New York did allow such a reference, is that correct?

A As far as I knew, yes.

Q And am I correct that your instructions were to comply with the law of the state in which you were doing business?

A That's correct.

Q For example, am I correct that the literature that was used at dinners in New York, ATC dinners in Ne York, had NYA numbers on them?

A Yes, they did.

Q And what did that NYA number mean to you?

A That it had been filed with the state.

Q And were you under directions that no literature could be used unless it had an NYA number on it?

A That's correct.

Q And you were asked when Daniel Friedman had come down and looked at your new office in New Jersey and approved it, is that correct?

A No. He saw the plans.

Q He saw the plans?

A Yes.

Q And he did approve the plans of your office in New Jersey?

A Yes, he did.

Q Did you hold sales dinners in your office in New Jersey?

A Yes, we did.

Q How often did you do that?

A Oh, about, I'd say, four or five nights a week on and above the dinner party program, yes.

Q Was the office designed specially to promote those sales dinners or was it designed to work in?

A It was originally designed to work in.

Q The plans that Dan Friedman approved were plans to work in?

A Yes.

Q Do you buy automobiles?

A Yes, I do.

Q Have you ever been offered a new model at present year's price if you committed to buy the new model?

MR. DEVORKIN: I object.

THE COURT: Overruled.

MR. DEVORKIN: It is not relevant.

MR. FLEMING: Do you want me to be more specific?

THE COURT: From what I heard in the last two weeks, it is extremely relevant.

MR. DEVORKIN: I object to automobiles, your Honor.

THE COURT: Overruled.

A Would you -- would you repeat it, please?

Q During your lifetime, let's take a hypothetical year -- the automobile models come out in the fall, is that right?

A Yes.

Q Like we are in 1976 now and the 1977 automobile models are coming out.

A That's true.

Q And prices of automobiles have increased, have they not?

A Unfortunately, yes.

Q Is it your experience as a businessman that that increase in price has to do, at least in substantial part, with the increase of cost to the manufacturer of building the automobile?

A Yes.

MR. DEVORKIN: I object on foundation.

THE COURT: Overruled.

A Yes.

Q It is what we call a cost inflation.

A Yes.

(Continued on next page.)

Q In your lifetime, have you ever been offered by an automobile dealer the right to purchase, for example, a 1977 model at 1976 prices if you committed to buy a 1977 model before the models came on the floor?

A Yes.

Q As a matter of fact, have you seen the Toyota ad on television --

A Yes, I have.

MR. DEVORKIN: I object, your Honor.

THE COURT: Overruled.

Q Just this year, which says if you commit to buy a 1977 Toyota, we will let you have it at 1976 prices?

A Yes, I have seen those.

Q I want to show you Defendant Exhibit X, AMREP Construction Corp. at Rio Rancho Estates, and I ask youto read it, and my question is, were you familiar with that fly and buy program (harding).

A No, I"m not familiar with this program.

Q Okay.

Do you recognize the stationery?

A Yes.

Q Before you testified today, did you spend some time with Mr. Devorkin in his office?

A Yes, I did.

Q Did Mr. Devorkin ask you if you were familiar with a fly and buy program for existing homesite owners?

A To buy homes?

Q Yes.

A No.

Q He didn't ask you that?

A No.

Q There were no drinks at the sales dinners?

A During the week? No.

Q And just one drink at the homesite weekend dinners?

A Yes.

Q By the way, those homesite weekend dinners, those were people who owned property at Rio Rancho for the most part?

A Sometimes they were in the majority and sometimes their friends were in the majority, yes.

Q In other words, it was either people -- it was comprised of people -- I will withdraw that.

Were existing homesite owners always present at those parties?

A Yes.

Q And on occasion, they were in the majority?

A Yes.

Q And on occasion they were not?

A That's correct.

Q And the other people at those parties were friends of the existing homesite owners?

A Yes.

Q Is it fair to say that a significant -- if that is a fair word -- number of the homesite owners who attended those parties had taken advantage of their refund privilege and had gone and visited Rio Rancho?

A Yes.

Q And had seen both the developed and the undeveloped portion of Rio Rancho before they brought their friends to a homesite Sunday dinner?

A Yes.

Q So you were dealing, at least in part, with men and women, husbands and wives, perhaps, who not only owned Rio Rancho property, but had been down there and had seen it both developed and undeveloped?

A Yes, some of them were.

Q And you, in fact, have been down on one of those tours yourself, am I right?

A A number of times, yes.

Q And the person homesite owner was shown both the developed and the undeveloped area?

A Yes.

Q Was she not?

A Yes.

Q And they were shown Albuquerque?

A Yes.

Q By the way, from your impression, did they have a pretty good time?

A Yes, I would say that.

Q And they were down there for -- is it five nights and four days?

A No. Mostly four nights and five days.

Q I can never get that straight.

That's right. You come in the daytime. You come in on the day and you leave on the day. So it is four nights and five days.

Am I correct that they went down there at a cost, a total cost for those four nights and five days which was less than it would have cost them to simply fly to Albuquerque without regard to room, board, entertainment, et cetera?

A That's correct.

Q And it was your impression they had a pretty good time?

A Yes.

Q Did anyone ever take their children down there?

A On the tours? No.

Q Did you testify that when you left AMREP in 1971, there were two hundred homes at Rio Rancho?

A No. I said the first time I was there in 1969 there were about two hundred homes there.

Q Do you know that there are now about 1800 homes there?

A Yes, I am aware of that.

Q I take it you saw development at Rio Rancho during the period of time you worked for AMREP or Rio Rancho, whoever you worked for.

A Yes, I did.

Q You testified there was no exchange privilege on the commercial property?

A That's correct.

Q Am I correct that the contract made that clear?

A Yes.

Q There was an exchange privilege for a building lot in connection with the residential property, is that right?

A Yes, there was.

Q Am I correct the contract made that clear?

A Yes.

Q You testified -- or did you testify -- did you testify that salesmen for ATC -- if you can answer this yes or no -- did you testify that salesmen at ATC were told that when they went through the contract with the prospective purchaser and they reached that portion of the contract where the purchaser was to acknowledge receipt of the federal property report and the state property report, the salesman was instructed to tell the purchaser that initially there would simply be receiving for whatever materials they would receive that night? Did you so testify?

A Yes.

Q Who told the salesmen that? Did you tell the salesmen that?

A I think this was something that was brought up at general meetings.

Q Well, I would like you to be a little more specific.

Did you tell the salesmen that, you?

A I'm sure I did at times, yes.

Q And Mr. Geller told them that?

A I'm sure he did that, too.

Q And Mr. Miller?

A Yes.

Q Mr. Miller is dead now?

A Yes.

Q You testified in another proceeding, did you not?

A Pardon me? I didn't quite hear you.

Q I said, you testified under oath in another proceeding having to do with sale of property at Rio Rancho, did you not?

A Yes, I did.

Q During your testimony at that proceeding under oath, did you ever say that you or anyone else had told salesmen to tell this to purchasers about the acknowledgment paragraph?

A I don't recall whether I was asked that question.

Q My question was, did you say it?

A I don't recall.

Q Now, you presently work for International Telephone & Telegraph.

A I work for ITT Community Development Corporation, a subsidiary.

Q Now, let's get it.

ITT Community Development Corporation.

A Corporation, yes.

Q And that is in the business of selling land?

A Land and homes, yes.

Q That is a wholly-owned -- that is a company which is owned entirely by Internationl Telephone & Telegraph Corporation?

A Yes.

Q Is International Telephone & Telegraph Corporation the biggest company in the wordl?

MR. DEVORKIN: I object.

THE COURT: Overruled.

A I really don't know.

Q Is it in the top five?

A I would guess so.

Q Pretty big?

A Yes.

Q Do you know how much -- do you know the net worth of International Telephone & Telegraph Corporation?

MR. DEVORKIN: I object.

THE COURT: Sustained.

Q When were you hired by ITT, International Telephone & Telegraph Corporation?

A October 1st.

Q This year?

A Yes.

Q Of course, they knew that you had worked for ATC and so forth?

A Yes, they did.

Q They knew that you had spent three years at ATC -- I am sorry, they knew that you had worked from 1968 to 1971 for ATC in New York and for a period of time for

ATC in New Jersey?

Yes, SGR.

Q They knew that you had returned -- what year did you return?

A 1974.

Q And that you had returned in 1974 and worked again for ATC?

A Yes.

Q For a period of time?

A Yes.

Q Have you been indicted in this case?

A No.

Q Were you named as a co-schemer with the defendants in this case?

A No.

Q Did you have any conversations with any prosecutor about that? Yes or no?

A No.

Q Have you ever spent any time with Ms. Hynes?

A Yes.

Q About six or seven hours a year ago?

A Something like that.

Q Over a two-day period, three-day period of time?

A Two days, I believe it was.

Q Have you spent time with Mr. Devorkin?

A Yes, I have.

Q Has that been recently?

A Yes.

Q This past week?

A Yes.

Q Preparing for your testimony here?

A Yes.

Q Refreshing your recollection?

A Asking me questions.

Q How long did you spend with Mr. Devorkin this past week?

A About three hours on Tuesday night and yesterday.

Q How many hours yesterday?

A I was here all day because they thought --

Q How many hours did you spend with Mr. Devorkin yesterday?

A Most of the day.

Q Now, when you first spoke with Ms. Hynes did she warn you of your constitutional rights?

A I don't recall.

Q In any event, it is your testimony that during the six or seven hours you spent with Ms. Hynes and the time you spent with Mr. Devorkin neither one of them ever mentioned to you the possibility that you might be indicted?

A No.

Q Even though it is your testimony that you told salesmen to tell purchasers that all they were initialling for was the literature they were receiving? That is your testimony?

A That is what it says on the contract.

Q Let's get it straight.

A They were initialling --

MR. FLEMING: Just a moment. Maybe I am confused.

We don't have a contract. Here is one. May I have that.

Q Here is Exhibit 146-O. I want to direct your attention to the paragraph where initials appear.

A Yes.

Q This happens to be a November 2, 1969 contract with David Jones and Elease Jones. The paragraph says:

"I or we acknowledge receipt of copies of the restrictive covenants, the property report filed with the

Office of Interstate Land Sales Registration, United States Department of Housing and Urban Development and any applicable public report, offering statement or prospectus required by state authorities."

Have I read correctly?

A Yes.

Q Now, is that what you mean when you said you told the samesmen to tell the purchaser what they were signing for?

A Yes, all of this was in the envelope that the people received.

Q I want to be clear.

Did you advise your salesmen to make sure that they told the purchaser that they were receiving these reports and were initialling for the receipt of these reports?

A Yes.

Q And that was what you were attempting to say on direct examination?

A I thought I had said that.

Q So you specifically told your salesmen to make sure that the purchaser knew that he was receiving these reports?

A Yes.

Q Did you make that clear to Mr. Devorkin in these six hours this week?

A I don't think we discussed that. We discussed the package that was given to the people. I thought I had made it clear.

Q Did you testify on your direct examination in response to questions by Mr. Devorkin as to what inducements -- I will withdraw that.

Directing your attention to the dinner parties about which you testified, do you recall being questions about you giving a speech?

A Yes.

Q Do you recall being asked what inducements you gave the people at the dinner to buy property?

A Yes.

Q I don't have the transcript, but do you recall what you said the inducements were?

A The inducements were the fact that the area was growing, Rio Rancho was growing, there were going to be a great many people coming into the area, that there was the possibility of making money by buying the property and the prices going up, a matter of supply and demand.

Q Did you at any time during your direct examination state that one of the inducements was that

Albuquerque was a nice place to live?

A I don't think I was asked that question.

Q Was one of the inducements, if we can call it that, made at the sales dinners that Albuquerque was a nice place to live?

A Yes.

Q That Rio Rancho was a nice place to live?

A Yes.

Q That it was a good place to build and live in?

A Yes.

Q That the climate was king?

A Yes.

Q As a matter of fact, the film, is it fair to say that the film "Your Golden Future" was a major part of the presentation?

A Yes.

Q And it said right in Your Golden Future that it was produced by the AMREP Corporation.

A That's correct.

Q Am I correct that the basic theme of the film was that Rio Rancho was a good place to live?

A That was a part of it, yes.

Q Now, you say you were not asked about that inducement on your direct examination.

A I don't believe so.

Q In your conversations with Mr. Devorkin before you testified here in court, did he tell you to limit inducements to those directed at investment as opposed to living?

A No.

Q You have been in the real estate business since 1952.

A Yes.

Q You are licensed?

A Yes.

Q Do you consider yourself a person of some experience?

A Yes.

Q Some judgment in the area?

A Which area?

Q Real estate?

A Yes.

Q Would you consider it propr to refer to you, yourself, as a land consultant?

A The only land that I have handled has been since Rio Rancho as far as land itself is concerned.

Q Do you feel yourself qualified -- I withdraw that.

Did you in 1969 feel yourself qualified to advise people with regard to the purchase of real estate?

A The purchase of homes, yes.

Q How about real estate, land.

A I had never really handled land, vacant land before.

Q Did you consider yourself qualified to advise people in 1969 about the purchase of land, the value of land?

A The value of land, no.

Q Now, it was your obligation to train your salesmen?

A Yes, part of the training.

Q Excuse me.

A Part of the training was my obligation.

Q You were a sales manager?

A Yes.

Q You had a sales team?

A Yes.

Q It was part of your responsibility to train your salesmen or sales persons?

A There was general training that they received prior to them working for me.

Q Where did they receive that training?

A From Peter Miller and Leonard Geller.

Q They also were licensed, were they not?

A Eventually they were all licensed. They couldn't work without being licensed.

Q They were licensed by the State of New York?

A Yes.

Q They had to be trained by the State of New York?

A No, they are not trained by the state.

MR. FLEMING: I withdraw that.

Q They had to pass a test?

A Yes.

Q They had to pass a test by the State of New York to license them as a real estate broker?

A A real estate salesman.

Q A real estate salesman. Was part of your responsibility to train them?

A For the test?

Q No, about real estate, the value of land.

A No.

Q It was not a part of your responsibility?

A My responsibility was teaching them how to sell.

Q Was it a part of your responsibility as sales manager to teach them about the value of land?

A No.

Q Now, the dinners, the guests were scheduled to arrive at seven o'clock, is that correct?

A That's correct.

Q Dinner was about 7:30?

A Approximately.

Q Am I correct thatmost of the guests arrived on time at seven?

A It varied from time to time. Between seven and 7:15 generally.

Q Am I correct that ordinarily there were two couples at a table with one salesman?

A If we had enough people coming in, yes.

Q In fact, on occasion you had so many people that you had prospective purchasers, whether couples or individuals, sitting at a table alone without a salesman?

A That's correct.

Q No, was there such a thing as a closing table?

A If the room was large enough, we would have additional small tables set up for closing, yes.

Q That was a situation where a salesman, if he were speaking -- let's assume a situation of two couples at the table and one salesman -- the salesman if he were going to speak to one couple about a purchase would go to the closing table to get away from the dishes and the rest, is that right?

A Right; that's correct.

Q The other couple would remain at the table?

A Yes.

Q And the literature would be on the table?

A That's correct.

Q Including the property reports?

A Yes.

Q And the federal property report?

A Yes.

Q Of course, the property reports were also on those tables where couples sat without salesmen in those situations where you had overflow?

A Yes.

Q Isn't it a fact -- I will withdraw that.

In your presentations -- the presentations you gave -- did you, in fact, stress the refund privilege?

A Yes.

Q Did you not, in fact, hold up the contract?

A Yes, I also read the refund privilege.

Q Let's take it one at a time. Youare at the podium and you are talking to the people in the room, is that right?

A Yes.

Q Was it not your practice to hold up the contract -- hold it up in the air -- and have the salesmen show the contracts to the various couples?

A Yes.

Q And to specifically go through the refund privilege with them?

A Yes, I did.

Q Direct their attention to the actual contract and then specifically read the refund privilege to them?

A That's correct.

Q Did you read any other portions of it to them specifically?

A No.

Q You just referred them to the contract generally?

A Yes.

Q And the salesmen were told to show them the contracts then?

A Yes.

Q That was before any hold was yelled out?

A That's correct.

Q That was before any figures were filled in?

A That's correct.

Q Let me ask you about that. You must have bought or purchased an automobile.

A Yes.

Q Home appliances?

A Yes.

Q Have you done it on terms, I mean on the installment plan?

A Yes, I have.

Q Have you ever asked the salesman to write it down so you can see what it looks like?

A Yes.

Q Would you prefer that he writes down the amount, the payments, the interest, the total amount when you are buying a car or would you rather have him just tell you?

A I want all the details in writing.

Q From your experience in the real estate business, looking at 146-O, a reservation and purchase agreement at Rio Rancho Estates, is that a fairly simple contract in the contracts you have seen in the real estate business?

MR. DEVORKIN: I object to the question.

THE COURT: Overruled.

A Yes.

Q Just one page, front and back?

A Front and back.

Q Now, there has been testimony about salesmen filling in the contract before the purchase was made, is that right; did you so testify?

A Yes.

Q Am I correct what he wrote in was the unit, the block, the lots, the purchase price and the total acreage?

A Yes.

Q And that described exactly what the prospective purchaser would buy if he bought?

A That's correct.

Q And then he wrote in the payment terms?

A Yes.

Q And then he wrote in the monthly payments?

A That's correct.

Q For example, on this one he wrote in "total cash purchase price, $7,606 for 1.68 acres"?

A That's correct.

Q He wrote in cash down payment, $385 and he wrote in unpaid balance of cash price, which would just be one from the other, would then be $7,220, is that right?

A That's correct.

Q And then he wrote in finance charge?

A Yes.

Q $1783.15?

A That's correct.

Q So he wrote it right down there what it would cost the purchaser to buy this land on installment basis?

A That's correct.

Q Have you had experiences where in buying items salesmen don't do that and you have to ask them how much it is going to cost extra?

A Yes, I have had that experience.

Q And then he added it all up and told the purchaser exactly what it would cost if the purchaser bought this property on an installment basis with the finance charges added?

A That's correct.

Q That came down to $9,003.15, is that right?

A Yes.

Q Over here he wrote out the monthly payments, $99 a month, right?

A Yes.

Q And the payment date would be the 15th of the month?

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